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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES FABIAN, individually; and on behalf
of All Others Similarly Situated;

Plaintiff,

V.

NANO f/k/a RAIBLOCKS f/k/a HIEUSYS.
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACK SHAPIRO; TROY RETZER; BG
SERVICES, S.R.L. f/k/a BITGRAIL S.R.L.
f/k/a WEBCOIN SOLUTIONS; AND
FRANCESCO “THE BOMBER” FIRANO.

Defendants.

§ Case Number: 4:19-cv-54-YGR

DECLARATION OF PETER FOX

1 I, Peter Fox, hereby declare as follows:

2 1. I am a partner at the law firm of Scoolidge Peters Russotti & Fox, LLP.

3 2. My firm represents Defendants Hieusys, LLC, Colin LeMahieu, Troy Retzer and Mica
4 Busch (together, with Zack Shapiro, the “Nano Defendants”) in the above-captioned matter.

5 3. I am submitting this declaration in support of the Nano Defendants’ opposition to
6 Plaintiff James Fabian’s motion to consolidate.

7 4. Annexed hereto as Exhibit A is a true and correct copy of a “redline” comparison of the
8 operative complaint in this action to the complaint filed in this district in the action, *Clemens v. Nano*,
9 20-CV-5351, on August 3, 2020.

10 5. Annexed hereto as Exhibit B is a true and correct copy of the Notice of Deposition of
11 Mr. Fabian served on May 29, 2020.

12 6. Annexed hereto as Exhibit C is a true and correct copy of the Nano Defendants’ First
13 Set of Interrogatories served on May 29, 2020.

14 7. Annexed hereto as Exhibit D is a true and correct copy of the Nano Defendants’ First
15 Requests for the Production of Documents served on May 29, 2020.

16 8. Annexed hereto as Exhibit E is a true and correct copy of the transcript of the
17 deposition of Mr. Fabian taken on August 7, 2020.

18 9. Annexed hereto as Exhibit F is a true and correct copy of Mr. Fabian’s Second
19 Supplemental Responses and Objections to the Nano Defendants’ First Set of Interrogatories served
20 on July 14, 2020.

21
22 Dated: August 17, 2020
New York, NY

23 /s/ Peter Fox
24 Scoolidge Peters Russotti & Fox, LLP
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New York, NY 10016
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28

EXHIBIT A

Text Comparison

Initial Document:
6903743_1.pdf

Changed Document:
_Clemens.pdf

Summary

Differences exist between the documents.

3016 word(s) added
7054 word(s) deleted
962 word(s) moved
14514 word(s) matched

5 page(s) added
16 page(s) deleted
51 page(s) replaced

<u>Insert</u>	Word(s) inserted
Delete	Word(s) deleted
Move	Word(s) moved
Different	Word(s) different only in style

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[Additional Counsel listed on signature block]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

~~JAMES FABIAN~~, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NANO F/K/A RAIBLOCKS F/K/A HIEUSYS,
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACK SHAPIRO; TROY RETZER; BG
SERVICES, S.R.L. F/K/A BITGRAIL S.R.L.
F/K/A WEBCOIN SOLUTIONS; AND
FRANCESCO "THE BOMBER" FIRANO,

Defendants.

Case No. ~~19-cv-54-YGR~~

~~FIRST AMENDED~~ CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

EXHIBIT A

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRAIG CLEMENS, ANAN THAMARNAN,
ALEC OTTO, KYLE PENN, JAMES SUPPLE,
MICHAEL MIGIERO, PETER DEDES,
JESSE CASE, RICHARD BARILLA,
MICHAEL OLIVER, ROBERT IRELAND,
EDWARD SEIMON, MATTHEW BATTISTINI,
and KADEEM BLANCHARD, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

NANO F/K/A RAIBLOCKS F/K/A HIEUSYS,
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACK SHAPIRO; TROY RETZER; BG
SERVICES, S.R.L. F/K/A BITGRAIL S.R.L.
F/K/A WEBCOIN SOLUTIONS; AND
FRANCESCO "THE BOMBER" FIRANO,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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INTRODUCTION

Plaintiff James Fabian (~~“Plaintiff” or “Fabian”~~), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, ~~alleges~~ in this ~~First Amended~~ Class Action Complaint (the ~~“Amended Complaint”~~) claims for: ~~(i) violations of Sections 12(a)(1) and 15(a) of the Securities Act of 1933 (the “Securities Act”) (the “Securities Act Claims”), (ii) breach of contract,¹ (iii) breach of implied contract,² (iv) breach of fiduciary duty, (v) aiding and abetting breach of fiduciary duty, (vi) negligence, (vii) negligent misrepresentation, (viii) fraud, (ix) constructive fraud, and (x) quasi contract seeking restitution based upon his own knowledge and acts, and based on facts obtained upon investigation by his counsel, which include, inter alia: (a) documents and solicitation materials released by Defendants Nano f/k/a RaiBlocks f/k/a Hieusys, LLC (“Nano” or the “Company”), Colin LeMahieu (“LeMahieu”), Mica Busch (“Busch”), Zack Shapiro (“Shapiro”), Troy Retzer (“Retzer” and together with Nano, LeMahieu, Busch and Shapiro, the “Nano Defendants”), B.G. Services SRL f/k/a BitGrail SRL f/k/a Webcoin Solutions (“BitGrail”), and Francesco “The Bomber” Firano (“Firano” together with BitGrail, the “BitGrail Defendants”) (collectively, “Defendants”) in connection with their promotion of a cryptocurrency called NANO (f/k/a RaiBlocks) (“XRB”); (b) public statements made by Defendants concerning XRB and its listing on BitGrail -- an Italian-based cryptocurrency exchange; (c) media publications concerning XRB and BitGrail; and (d) the bankruptcy decisions issued by the Tribunale Di Firenze of Italy against ~~against~~ Defendant BitGrail in *In re BG Services (BitGrail S.R.L.)*, Trib. Florence, n.18/2019 (the “BitGrail Decision”) and against Defendant Firano in *In re Firano*, Trib. Florence, n. 18/2019 (the “Firano Decision”).~~

~~Plaintiff believes~~ that further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to Defendants or are exclusively within their control.

¹ ~~Plaintiff’s claim for breach of contract is asserted solely against the BitGrail Defendants (defined below).~~

² ~~Plaintiff’s claim for breach of implied contract is asserted solely against the Nano Defendants (defined below).~~

INTRODUCTION

Plaintiffs Craig Clemens, Anan Thamarnan, Alec Otto, Kyle Penn, James Supple, Michael Migiero, Peter Dedes, Jesse Case, Richard Barilla, Michael Oliver, Robert Ireland, Edward Seimon, Matthew Battistini, and Kadeem Blanchard (together, “Plaintiffs”), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, allege in this Class Action Complaint (the “Complaint”) claims against Defendants Nano f/k/a RaiBlocks f/k/a Hieusys, LLC (“Nano” or the “Company”), Colin LeMahieu (“LeMahieu”), Mica Busch (“Busch”), Zack Shapiro (“Shapiro”), Troy Retzer (“Retzer” and together with Nano, LeMahieu, Busch and Shapiro, the “Nano Defendants”), B.G. Services SRL f/k/a BitGrail SRL f/k/a Webcoin Solutions (“BitGrail”), and Francesco “The Bomber” Firano (“Firano” together with BitGrail, the “BitGrail Defendants”) (collectively, “Defendants”) for:

(i) negligence; (ii) negligent misrepresentation; (iii) fraud; and (iv) breach of contract; seeking restitution based upon Plaintiffs’ own knowledge and acts, and based on facts obtained upon investigation by their **counsel, which include, *inter alia*: (a) documents and solicitation materials released by** Defendants in connection with their promotion of a cryptocurrency called NANO (f/k/a RaiBlocks) (“XRB”); (b) public statements made by Defendants concerning XRB and its listing on BitGrail -- an Italian-based cryptocurrency exchange; (c) media publications concerning XRB and BitGrail; and (d) the bankruptcy decisions issued by the Tribunale Di Firenze of Italy against Defendant BitGrail in *In re BG Services (BitGrail S.R.L.)*, Trib. Florence, n.18/2019 (the “BitGrail Decision”) and against Defendant Firano in *In re Firano*, Trib. Florence, n. 18/2019 (the “Firano Decision”).

Plaintiffs believe that further substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to Defendants or are exclusively within their control.

This Complaint is meant to be consolidated with the Amended Complaint filed in this forum in the class action lawsuit styled *Fabian v. Nano et. al.*, U.S. District Court - Northern District of California - Case No. 4:19-cv-00054-YGR (SK) (the “*Fabian* Action”); so Plaintiffs in this related action may be added as plaintiffs in the *Fabian* Action. This Complaint adds no material substance to

NATURE AND SUMMARY OF THE ACTION

1
2 1. This is a class action on behalf of a class of investors consisting of all individuals and
3 entities who transferred fiat currency or cryptocurrency to ~~BitGrail to~~ invest in XRB or transferred
4 XRB to BitGrail ~~from April 1, 2017 through February 8, 2018, inclusive,~~ and who suffered financial
5 injury as a result thereof (the “Class” who purchased or held XRB on BitGrail during the “Class
6 Period”). This action seeks to recover rescissory, compensatory, punitive and injunctive relief under
7 ~~Sections 12(a)(1) and 15(a) of the Securities Act [15 U.S.C. §§ 77l(a)(1) & 77o(a)]~~ and various state
8 and common law claims against Nano, certain of its top officials, certain influential promoters that
9 received compensation in exchange for selling XRB or soliciting the general public to purchase XRB,
10 and its partner the BitGrail Defendants.

11 2. The Nano Defendants developed XRB, which they each promoted, offered, traded and
12 sold to the general public for the Nano Defendants’ personal financial benefit. XRB has never been
13 registered as a security with the Securities and Exchange Commission and is not exempt from
14 registration.

15 ~~3.~~ The Nano Defendants began working with the BitGrail Defendants to create BitGrail’s
16 “RaiBlocks dedicated exchange” (the “BitGrail Exchange”) in approximately December 2016. Indeed,
17 Defendant LeMahieu personally worked with Defendant Firano and a member of Nano’s core
18 development team—an individual known as “mikerow”³—until October 2017 in developing the
19 BitGrail Exchange. In the words of mikerow on an online cryptocurrency discussion forum
20 (www.bitcointalk.org (~~“Bitcoin Talk”~~)) on May 4, 2017, the BitGrail Exchange was “written from 0
21 for XRB.”

22 ~~4.~~ The BitGrail Exchange launched in April 2017 (www.bitgrail.com). Throughout the
23 Class Period, each of the Nano Defendants remained substantially involved in the ~~maintenance of the~~
24 BitGrail Exchange’s XRB-related operations and retained significant control over Defendant Firano’s
25 decision making concerning the BitGrail Exchange.

26
27 ³ “Mikerow” left the Nano development team in late-2017 following a disagreement regarding the Nano
28 Defendants’ decision to cease the Nano Faucet (defined *infra*).

the Amended Complaint in the *Fabian* Action beyond merely naming new Plaintiffs and setting forth the facts underlying their claims.

NATURE AND SUMMARY OF THE ACTION

1. This is a class action on behalf of a class of investors consisting of all individuals and entities who are citizens of the United States and who -- from April 1, 2017 through March 31, 2018, inclusive -- transferred to BitGrail fiat currency or cryptocurrency to invest in XRB or transferred XRB to BitGrail and who suffered financial injury as a result thereof (the “Class” who purchased or held XRB on BitGrail during the “Class Period”). This action seeks to recover rescissory, compensatory, punitive and injunctive relief under various state and common law claims against Nano, certain of its top officials, certain influential promoters that received compensation in exchange for selling XRB or soliciting the general public to purchase XRB, and its partner the BitGrail Defendants.

2. The Nano Defendants developed XRB, which they each promoted, offered, traded and sold to the general public for the Nano Defendants’ personal financial benefit.

3. XRB has never been registered as a security with the Securities and Exchange Commission and is not exempt from registration.

4. The Nano Defendants began working with the BitGrail Defendants to create BitGrail’s “RaiBlocks dedicated exchange” (the “BitGrail Exchange”) in approximately December 2016. Indeed, Defendant LeMahieu personally worked with Defendant Firano and a member of Nano’s core development team—an individual known as “mikerow”¹— until October 2017 in developing the BitGrail Exchange. In the words of mikerow on an online cryptocurrency discussion forum (www.bitcointalk.org) on May 4, 2017, the BitGrail Exchange was “written from 0 for XRB.”

5. The BitGrail Exchange launched in April 2017 (www.bitgrail.com). Throughout the Class Period, each of the Nano Defendants remained substantially involved in maintaining the BitGrail Exchange’s XRB-related operations and retained significant control over Defendant Firano’s decision making concerning the BitGrail Exchange.

¹ “Mikerow” left the Nano development team in late-2017 following a disagreement regarding the Nano Defendants’ decision to cease the Nano Faucet (defined *infra*).

1 ~~5.~~ Throughout the Class Period, the Nano Defendants directed the investing public to
2 purchase XRB through, and stake XRB at, BitGrail by, *inter alia*, (i) commissioning, and contributing
3 to, the creation of the BitGrail Exchange; (ii) providing specific investment instructions and assurances
4 that the BitGrail Exchange was secure and could be trusted to safeguard investment assets; and (iii)
5 collaborating with the BitGrail Defendants in maintaining ~~and the BitGrail Exchange's~~ on its XRB-
6 related ~~related~~ operations.

7 ~~6.~~ In July 2017, during a private group chat ~~including~~ Defendant Firano and the Nano
8 Defendants, Firano reported to the Nano team that there was an error in the code (the “XRB Protocol”)
9 for maintaining XRB’s ledgers and transferring XRB from the BitGrail Exchange into private wallets,
10 which caused certain transactions to be entered two or more times.⁴ The Double Withdrawal
11 Transactions occurred because the XRB Protocol lacked “idempotence.”⁵

12 ~~7.~~ Due to the XRB Protocol lacking idempotence, the Double Withdrawal Transactions
13 were accomplished even if the account transferring the XRB off of the BitGrail Exchange lacked
14 sufficient funds to complete the multiple transactions—by transferring XRB belonging to other
15 accountholders off of the BitGrail Exchange to the private wallet destination.

16 ~~8.~~ Approximately 2.5 million XRB were stolen in July 2017 by exploiting XRB’s lack of
17 idempotence in the XRB Protocol, which permitted Double Withdrawal Transactions. The error
18 permitting the Double Withdrawal Transactions was exploited by anonymous users of the BitGrail
19 Exchange from July 2017 through and including January 2018 to ultimately obtain over 15 million
20 XRB rightfully belonging to the Class.

21
22
23 ⁴ While these withdrawals involved two or more identical transactions being processed, these erroneous
transactions are, for simplicity, referred to herein as “Double Withdrawals Transactions.”

24 ⁵ As explained by the Tribunal in the BitGrail Decision: “~~“Idempotence”~~ is the property of executing a
25 command only once, even if issued multiple times, even if identical and in rapid succession. To give
26 a ‘trivial’ but clarifying example: during cash withdrawals at an ATM, also trying to press the
27 withdrawal button several times, the ‘idempotent’ function means that the device can emit one and only
28 one withdrawal command, providing the requested cash only once, and tracking the withdrawal only
once in the account statement of the customer.”

6. Throughout the Class Period, the Nano Defendants directed the investing public to purchase XRB through, and stake XRB at, BitGrail by, *inter alia*: (i) commissioning, and contributing to, the creation of the BitGrail Exchange; (ii) providing specific investment instructions and assurances that the BitGrail Exchange was secure and could be trusted to safeguard investment assets; and (iii) collaborating with the BitGrail Defendants in maintaining the BitGrail Exchange on its XRB-related operations.

7. In July 2017, during a private group chat between Defendant Firano and the Nano Defendants, Firano reported to the Nano team that there was an error in the code (the “XRB Protocol”) for maintaining XRB’s ledgers and transferring XRB from the BitGrail Exchange into private wallets, which caused certain transactions to be entered two or more times.² The Double Withdrawal Transactions occurred because the XRB Protocol lacked “idempotence.”³

8. Due to the XRB Protocol lacking idempotence, the Double Withdrawal Transactions were accomplished even if the account transferring the XRB off of the BitGrail Exchange lacked sufficient funds to complete the multiple transactions—by transferring XRB belonging to other accountholders off of the BitGrail Exchange to the private wallet destination.

9. Approximately 2.5 million XRB were stolen in July 2017 by exploiting XRB’s lack of idempotence in the XRB Protocol, which permitted Double Withdrawal Transactions.

10. The error permitting the Double Withdrawal Transactions was exploited by anonymous users of the BitGrail Exchange from July 2017 through and including January 2018 to ultimately obtain over 15 million XRB rightfully belonging to the Class.

² While these withdrawals involved two or more identical transactions being processed, these erroneous transactions are, for simplicity, referred to herein as “Double Withdrawals Transactions.”

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1 ~~9.~~ Throughout the BitGrail Exchange’s existence, Defendant Firano “highly recommended
2 to [the Nano Defendants] that we close the markets because of major issues with the NANO protocol,
3 but they were hesitant and forced me to keep it open and sometimes begged as well.”⁶

4 ~~10.~~ On or about February 8, 2018, the BitGrail Defendants announced that over 15 million
5 XRB, bearing a market value of approximately \$170 million, which were supposedly safely stored on
6 BitGrail, were “lost.”

7 ~~11.~~ Less than 24 hours after investors learned that the entirety of their XRB holdings were
8 “lost,” the Nano Defendants released to their XRB investors an “Official Statement Regarding BitGrail
9 Insolvency,” denying any responsibility and pointing their finger at BitGrail:

10 BitGrail is an independent business and Nano is not responsible for the way
11 Firano or BitGrail conduct their business. We have no visibility into the
12 BitGrail organization, nor do we have control over how they operate.

13 See Nano Core Team, *Official Statement Regarding BitGrail Insolvency* (Feb. 9, 2018).

14 ~~12.~~ Since that announcement, the Nano Defendants have made every effort to distance
15 themselves from BitGrail and their substantial involvement with BitGrail’s operations related to
16 purchasing, selling, and storing custody of XRB. Indeed, the Nano Defendants have even gone so far
17 as to fund a lawsuit against its former partners, the BitGrail Defendants, to avoid unwanted attention
18 for their actions. For example, on April 6, 2018, a putative class action (which has since been settled
19 on an individual non-public basis) was filed in the United States District Court for the Southern District
20 of New York. A mere three (3) days later, on April 9, 2018, the Nano Defendants announced that the
21 Company was “sponsoring” a “legal fund” purportedly designed to “provide all victims of the hack of
22 the cryptocurrency exchange BitGrail with equal access to representation” and enable such investors
23 to seek recourse against the exchange.

24
25
26 ⁶ The foregoing is from a public statement Defendant Firano published on May 2, 2018 on Medium.com
27 regarding his relationship with the Nano Defendants and BitGrail’s operations. This post was ~~entitled~~
28 “On NANO and BitGrail and The Repercussions of Supporting Technology That Is Not Ready For
Mass Consumption” and is referred to herein as the “Firano Statement.”

1 11. Throughout the BitGrail Exchange’s existence, Defendant Firano “highly recommended
2 to [the Nano Defendants] that we close the markets because of major issues with the NANO protocol,
3 but they were hesitant and forced me to keep it open and sometimes begged as well.”⁴

4 12. On or about February 8, 2018, the BitGrail Defendants announced that over 15 million
5 XRB, bearing a market value at the time of approximately \$170 million, which were supposedly safely
6 stored on BitGrail, were “lost.”

7 13. Less than 24 hours after investors learned that the entirety of their XRB holdings were
8 “lost,” the Nano Defendants released to their XRB investors an “Official Statement Regarding BitGrail
9 Insolvency,” denying any responsibility and pointing their finger at BitGrail:

10 BitGrail is an independent business and Nano is not responsible for the way
11 Firano or BitGrail conduct their business. We have no visibility into the
12 BitGrail organization, nor do we have control over how they operate.

13 See Nano Core Team, *Official Statement Regarding BitGrail Insolvency* (Feb. 9, 2018).

14 14. Since that announcement, the Nano Defendants have made every effort to distance
15 themselves from BitGrail and their substantial involvement with BitGrail’s operations related to
16 purchasing, selling, and storing custody of XRB.

17 15. Indeed, the Nano Defendants have even gone so far as to fund a lawsuit against its
18 former partners, the BitGrail Defendants, to avoid unwanted attention for their actions. For example,
19 on April 6, 2018, a putative class action (which has since been settled on an individual non-public basis)
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21 days later, on April 9, 2018, the Nano Defendants announced that the Company was “sponsoring” a
22 “legal fund” purportedly designed to “provide all victims of the hack of the cryptocurrency
23 exchange BitGrail with equal access to representation” and enable such investors to seek recourse
24 against the exchange.

25 ⁴ The foregoing is from a public statement Defendant Firano published on May 2, 2018 on Medium.com
26 regarding his relationship with the Nano Defendants and BitGrail’s operations. This post was titled
27 “On NANO and BitGrail and The Repercussions of Supporting Technology That Is Not Ready For
28 Mass Consumption” and is referred to herein as the “Firano Statement.”

13. On February 16, 2018 -- after the 15 million XRB had been “lost” -- the Nano Defendants updated the XRB Protocol to include idempotence, thereby preventing future Double Withdrawal Transactions from occurring.

14. Defendants: (a) ~~unlawfully issued, distributed, and promoted the ongoing sale of XRB -- an unregistered security,~~ (b) were responsible for managing BitGrail’s safekeeping of the ~~unregistered security on BitGrail -- itself an unregistered exchange,~~ (c) successfully solicited the general public to entrust BitGrail with their substantial assets by promoting, encouraging, and otherwise directing investors to establish XRB trading accounts at BitGrail; (d) expressly endorsed and assured the public that BitGrail was a safe, secure, and valid exchange; (e) continued to endorse and promote the use of BitGrail as a safe, secure, and valid exchange, notwithstanding having direct insider information of specific issues likely to jeopardize accountholders XRB investments months prior to the February 8, 2018 announcement; and (f) profited from the purchase and sale of XRB on BitGrail and other exchanges.

15. ~~Plaintiff’s Securities Act Claims arise from Defendants’ offer and sale of XRB -- which constituted the offer and sale of an investment contract security because, *inter alia*, Defendants touted, and Plaintiff and XRB purchasers were conditioned to expect, and did reasonably expect, that XRB received would increase in value and become worth more than the fiat or digital currencies invested. Defendants are strictly liable for offering and selling these unregistered securities.~~

16. ~~Plaintiff’s claim for breach of contract against the BitGrail Defendants arises from “the agreement executed between the exchanger and its users [being] a service agreement through which the exchanger guarantees the possibility to perform the exchange, sale and purchase and deposit, through an account, of various types of virtual currencies, including the ‘Nano’ cryptocurrency.” See BitGrail Decision. The BitGrail Defendants breached this contract by failing to maintain the Class’ XRB deposits on the BitGrail Exchange, as evidenced by the loss of \$170 million worth of the Class’ XRB investments announced in February 2018.~~

17. ~~Plaintiff’s claim for breach of implied contract against the Nano Defendants arises from the implied contracts that the Nano Defendants had with Plaintiff and the Class through their~~

1 16. On February 16, 2018 -- after the 15 million XRB had been “lost” -- the Nano
2 Defendants updated the XRB Protocol to include idempotence, thereby preventing future Double
3 Withdrawal Transactions from occurring.

4 17. Defendants: (a) successfully solicited the general public to entrust BitGrail with their
5 substantial assets by promoting, encouraging, and otherwise directing investors to establish XRB
6 trading accounts at BitGrail; (d) expressly endorsed and assured the public that BitGrail was a safe,
7 secure, and valid exchange; (e) continued to endorse and promote the use of BitGrail as a safe, secure,
8 and valid exchange, notwithstanding having direct insider information of specific issues likely to
9 jeopardize accountholders XRB investments months prior to the February 8, 2018 announcement; and
10 (f) profited from the purchase and sale of XRB on BitGrail and other exchanges.

11 18. Plaintiffs’ claims for negligence against the Nano Defendants arise from the Nano
12 Defendants’ failure to adopt adequate idempotency measures in the XRB Protocol and the BitGrail
13 Defendants’ failure to safeguard the Class’ XRB deposits, resulting in the theft of the Class’ XRB—
14 representing a \$170 million loss.

15 19. Plaintiffs’ claims for negligent misrepresentation arise from Defendants’ assurances
16 through January 2018 that the Class’ XRB deposits on the BitGrail Exchange were “safe” despite
17 having actual knowledge of, or recklessly disregarding, the fact that the Double Withdrawal
18 Transactions were occurring as early as July 2017—when according to the Tribunal in the BitGrail
19 Decision, Defendant Firano notified the Nano Defendants of the issue in a private group chat.

20 20. Plaintiffs’ claims for fraud arise from Defendants’ intentional concealment of the losses
21 occurring on the BitGrail Exchange throughout the Class Period by falsely assuring that the Class’
22 funds were safe. Plaintiff and the Class detrimentally relied on these false assurances by maintaining
23 their XRB funds on the BitGrail Exchange rather than withdrawing the XRB to their personal wallets.
24 Because the Nano Defendants created XRB and maintained the XRB Protocol and repeatedly vouched
25 that the BitGrail Defendants could be trusted, Plaintiff’s reliance on Defendants false assurances was
26 justifiable. To the Class’ detriment, Defendants each benefited from their concealment of the XRB
27
28

1 participation in creating and running the BitGrail Exchange as well as through their creation of XRB
2 and maintenance of its protocols. These implied contracts were breached by the Nano Defendants: (i)
3 forcing of Defendant Firano to keep the BitGrail Exchange operating despite having been aware of the
4 error in the XRB Protocol, permitting the Double Withdrawal Transactions to occur since July 2017;
5 and (ii) permitting the Double Withdrawal Transactions to occur in the first place by failing to
6 implement necessary idempotence safeguards in the XRB Protocol—a safeguard the Nano Defendants
7 included after the Class had already lost \$170 million worth of XRB—on February 16, 2018.

8 18. Plaintiff's claim for breach of fiduciary duty against the Nano Defendants arises from
9 their breach of their duties to the Class—both in their capacity as the developers of XRB and as their
10 involvement in, or control over, the BitGrail Exchange's XRB-related operations—by: (i) forcing
11 Defendant Firano to keep the BitGrail Exchange online despite having actual knowledge in July 2017
12 of, or recklessly disregarding, the fact that the Double Withdrawal Transactions were causing
13 significant losses to the Class's funds on the BitGrail Exchange; (ii) failing to maintain adequate controls
14 preventing the theft of XRB from the BitGrail Exchange; and (iii) concealing the fact that the Class's
15 funds were, in fact, not “safe” on the BitGrail Exchange. The Nano Defendants benefited from their
16 breaches of duties owed the Class by selling millions of XRB—which rose in value from \$0.01 for
17 each XRB in April 2017 to over \$32 for each XRB in December 2017, largely as a result of the
18 significant XRB trading volume the BitGrail Exchange provided.

19 19. Plaintiff's claim for breach of fiduciary duty against the BitGrail Defendants arises from
20 their breach of their duties to the Class in their capacity as the owners of the BitGrail Exchange by: (i)
21 failing to rebuff the Nano Defendants' insistence on keeping the BitGrail Exchange online despite
22 having actual knowledge of, or recklessly disregarding, the fact that the Double Withdrawal
23 Transactions were occurring; and (ii) concealing the fact that the Class's funds were being depleted from
24 July 2017 through January 2018 through the exploitation permitting the Double Withdrawal
25 Transactions to occur.

26 20. Plaintiff's claim for aiding and abetting breach of fiduciary duty against the Nano
27 Defendants arises from their aiding the BitGrail Defendant's breaches of their duties to the Class by
28

1 forcing Defendant Firano to keep the BitGrail Exchange online -- permitting the ongoing theft of the
2 Class' funds -- and concealing their knowledge that the Class' XRB deposits on BitGrail were being
3 stolen from July 2017 through January 2018.

4 21. Plaintiff's claims for negligence against Defendants arise from the Nano Defendant's
5 failure to adopt adequate idempotency measure in the XRB Protocol and the BitGrail Defendant's
6 failure to safeguard the Class' XRB deposits, resulting in the theft of the Class' XRB—representing a
7 \$170 million loss.

8 22. Plaintiff's claims for negligent misrepresentation arise from Defendants' assurances
9 through January 2018 that the Class' XRB deposits on the BitGrail Exchange were "safe" despite
10 having actual knowledge of, or recklessly disregarding, the fact that the Double Withdrawal
11 Transactions were occurring as early as July 2017—when according to the Tribunal in the BitGrail
12 Decision, Defendant Firano notified the Nano Defendants of the issue in a private group chat.

13 23. Plaintiff's claims for fraud and constructive fraud arise from Defendants' intentional
14 concealment of the losses occurring on the BitGrail Exchange throughout the Class Period by falsely
15 assuring that the Class' funds were safe. Plaintiff and the Class detrimentally relied on these false
16 assurances by maintaining their XRB funds on the BitGrail Exchange rather than withdrawing the XRB
17 to their personal wallets. Because the Nano Defendants created XRB and maintained the XRB Protocol
18 and repeatedly vouched that the BitGrail Defendants could be trusted, Plaintiff's reliance on Defendants
19 false assurances was justifiable. To the Class' detriment, Defendants each benefited from their
20 concealment of the XRB losses by the Nano Defendants' sale of millions of XRB at inflated prices and
21 the BitGrail Defendants' ability to extract transaction fees operating the BitGrail Exchange.

22 24. Plaintiff's quasi contract claim seeking restitution arises because Defendants induced
23 Plaintiff and the Class to create accounts on the BitGrail Exchange, purchase XRB through the
24 exchange, and maintain their XRB on the platform despite Defendants' knowledge of ongoing theft of
25 the Class' funds. Defendants were unjustly enriched by Plaintiff's and the Class' use of the BitGrail
26 Exchange by the Nano Defendants' sale of XRB at inflated prices and the BitGrail Defendants'
27 extraction of transaction fees from the exchange's operation.

1 losses by the Nano Defendants' sale of millions of XRB at inflated prices and the BitGrail Defendants'
2 ability to extract transaction fees operating the BitGrail Exchange.

3 21. Plaintiff's claim for breach of contract against the BitGrail Defendants arises from "the
4 agreement executed between the exchanger and its users [being] a service agreement through which
5 the exchanger guarantees the possibility to perform the exchange, sale and purchase and deposit,
6 through an account, of various types of virtual currencies, including the 'Nano' cryptocurrency." See
7 BitGrail Decision. The BitGrail Defendants breached this contract by failing to maintain the Class'
8 XRB deposits on the BitGrail Exchange, as evidenced by the loss of \$170 million worth of the Class'
9 XRB investments announced in February 2018.

10 22. Plaintiffs and the Class are among the members of the public who invested in tens of
11 millions of dollars' worth of XRB to be held in, and exchanged from, their BitGrail accounts, and who,
12 from April 2017 through March 2018, through no fault of their own, suffered a loss of more than \$170
13 million worth of XRB when their investment holdings were simply "lost."

14 23. For these reasons, Plaintiffs on behalf of themselves, and all similarly situated XRB
15 investors, seeks compensatory, injunctive, and rescissory relief, providing rescission and repayment of
16 all investments made to purchase, or store, XRB Tokens on BitGrail prior to February 8, 2018.

17 JURISDICTION AND VENUE

18 24. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
19 § 1332(a) and 1332(d)(2)(A) because this is a class action in which the matter or controversy exceeds
20 the sum of \$5,000,000.00, exclusive of interest and costs, and in which some members of the Class are
21 citizens of a state different from Defendants.

22 25. The Court has personal jurisdiction over each of the Defendants because each either
23 conducts business in and maintains operations in this District or is an individual who either is present
24 in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to
25 render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and
26 substantial justice.

25. Plaintiff and the Class are among the members of the public who invested in tens of millions of dollars' worth of XRB to be held in, and exchanged from, their BitGrail accounts, and who, from July 2017 through January 2018, through no fault of their own, suffered a loss of more than \$170 million worth of XRB when their investment holdings were simply "lost."

26. For these reasons, Plaintiff on behalf of himself, and all similarly situated XRB investors, seeks compensatory, injunctive, and rescissory relief, providing rescission and repayment of all investments made to purchase, or store, XRB Tokens on BitGrail prior to February 8, 2018.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and 1332(d)(2)(A) because this is a class action in which the matter or controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs, and in which some members of the Class are citizens of a state different from Defendants.

28. This Court also has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and Section 22 of the Securities Act [15 U.S.C. § 77v] because Plaintiffs allege violations of Sections 12(a)(1) and 15(a) of the Securities Act [15 U.S.C. §§ 77(a)(1) and 77o(a)]. Plaintiffs' federal claims further provide this Court with supplemental jurisdiction over their state and common law claims under 28 U.S.C. § 1367.

29. The Court has personal jurisdiction over each of the Defendants because each either conducts business in and maintains operations in this District or is an individual who either is present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

30. Venue is proper in this District under Section 22 of the Securities Act, 15 U.S.C. § 77v, as well as under 28 U.S.C. § 1391, because: (a) the conduct at issue took place and had an effect in this District; (b) a substantial portion of the transactions and wrongs complained of herein occurred here; and (c) Defendants have received substantial compensation and other transfers of money here by doing business here and engaging in activities having an effect in this District.

PARTIES

31. Plaintiff is an individual domiciled in ~~Discovery Bay, California~~ and is *sui juris*. On February 8, 2018, Plaintiff had ~~23,033~~ XRB frozen by Defendants -- valued on or about February 8, 2018 at over Two Hundred ~~Sixty~~ Thousand Dollars (~~\$260,000.00~~).

32. Defendant Nano f/k/a RaiBlocks f/k/a Hieusys, LLC ("NANO") is a Texas company which lists its principal place of business in Austin, Texas. According to NANO's own published promotional materials, NANO is a "low-latency payment platform" that "utilizes a novel block-lattice architecture" on which "each account has [its] own blockchain as part of a larger directed acyclic graph." In layman's terms, NANO purports to have created a faster, cheaper, and more scalable blockchain and cryptocurrency that improves upon earlier blockchains and cryptocurrencies such as the widely-popular bitcoin.

33. Defendant Colin LeMahieu ("LeMahieu") is an individual domiciled in Austin, Texas and is *sui juris*. According to Nano's own published promotional materials, LeMahieu founded NANO in 2014 and serves as the Company's Lead Developer, "spearheading development of the core protocol."

34. Defendant Mica Busch ("Busch") is an individual domiciled in Chicago, Illinois and is *sui juris*. According to NANO's own published promotional materials, at all relevant times, Busch was a key member of Nano's core team, serving as a "Control System Developer" for Nano's "Residential" and "Enterprise" markets.

35. Defendant Zack Shapiro ("Shapiro") is an individual domiciled in Brooklyn, New York and is *sui juris*. According to Nano's own published promotional materials, at all relevant times, Shapiro was a key member of Nano's core team, as he "runs Mobile, Wallets, and Product" for the company and ~~serves~~ as the company's head iOS Developer.

36. Defendant Troy Retzer ("Retzer") is an individual domiciled in Hilton Head Island, South Carolina and is *sui juris*. According to Nano's own published promotional materials, Retzer is a key member of Nano's core team, as he manages and directs the company's marketing and Community and Public Relations efforts.

26. Venue is proper in this District under Section 22 of the Securities Act, 15 U.S.C. § 77v, as well as under 28 U.S.C. § 1391, because: (a) the conduct at issue took place and had an effect in this District; (b) a substantial portion of the transactions and wrongs complained of herein occurred here; and (c) Defendants have received substantial compensation and other transfers of money here by doing business here and engaging in activities having an effect in this District.

PARTIES

Plaintiffs

27. Plaintiff Craig Clemens is an individual domiciled Pacific Palisades, California, and is *sui juris*. On February 8, 2018, Plaintiff Clemens had 31372 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Three Hundred and Seventy Five Thousand Dollars (\$375,000.00).

28. Plaintiff Matthew Battistini is an individual domiciled Ellenton, Florida, and is *sui juris*. On February 8, 2018, Plaintiff Battistini had 330 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Four Thousand Dollars (\$4,000.00).

29. Plaintiff Kadeem Blanchard is an individual domiciled Tampa, Florida, and is *sui juris*. On February 8, 2018, Plaintiff Blanchard had 200 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Two Thousand Five Hundred Dollars (\$2,500.00).

30. Plaintiff Edward Seimon is an individual domiciled Chaska, Minnesota, and is *sui juris*. On February 8, 2018, Plaintiff Seimon had 800 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Nine Thousand Six Hundred Dollars (\$9,600.00).

31. Plaintiff Kyle Penn is an individual domiciled Los Angeles, Minnesota, and is *sui juris*. On February 8, 2018, Plaintiff Penn had 329.48 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Four Thousand Dollars (\$4,000.00).

32. Plaintiff Alec Otto is an individual domiciled North Hollywood, California, and is *sui juris*. On February 8, 2018, Plaintiff Otto had 391 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Four Thousand Five Hundred Dollars (\$4,500.00).

33. Plaintiff Robert Ireland an individual domiciled Port Washington, Wisconsin, and is *sui juris*. On February 8, 2018, Plaintiff Ireland had 74.25 XRB frozen by Defendants -- valued on or about February 8, 2018 at over One Thousand Dollars (\$1,000).

34. Plaintiff Michael Oliver is an individual domiciled Traverse City, Michigan, and is *sui juris*. On February 8, 2018, Plaintiff Oliver claims to have had an amount of XRB frozen by the Defendants, and incurred losses as a result.

35. Plaintiff Richard Barilla is an individual domiciled Jersey City, New Jersey, and is *sui juris*. On February 8, 2018, Plaintiff Barilla had 4144 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Fifty Thousand Dollars and (\$50,000.00).

36. Plaintiff Jesse Case is an individual domiciled Chicago, Illinois, and is *sui juris*. On February 8, 2018, Plaintiff Case had 112.7 XRB frozen by Defendants -- valued on or about February 8, 2018 at over One Thousand Five Hundred Dollars (\$1,500.00).

37. Plaintiff Peter Dedes is an individual domiciled Chicago, Illinois, and is *sui juris*. On February 8, 2018, Plaintiff Dedes had 1800.67 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Twenty Two Thousand Dollars (\$22,000.00).

38. Plaintiff Anan Thamarnan is an individual domiciled Rowland Heights, California, and is *sui juris*. On February 8, 2018, Plaintiff Thamarnan had 674.06 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Eight Thousand Dollars (\$8,000.00).

39. Plaintiff James Supple is an individual domiciled Rockville Centre, New York, and is *sui juris*. On February 8, 2018, Plaintiff Supple had 2570.50 XRB frozen by Defendants -- valued on or about February 8, 2018 at over Thirty One Thousand Dollars (\$31,000.00).

40. Plaintiff Michael Migliero is an individual domiciled Austin, Texas, and is *sui juris*. On February 8, 2018, Plaintiff Migliero had 17000 XRB frozen by Defendants -- valued on or about February 8, 2018 at over TTwo Hundred and Five Thousand Dollars (\$205,000.00).

Defendants

41. Defendant Nano f/k/a RaiBlocks f/k/a Hieusys, LLC ("NANO") is a Texas company which lists its principal place of business in Austin, Texas. According to NANO's own published

37. Defendant B.G. Services SRL f/k/a BitGrail SRL f/k/a Webcoin Solutions (“BitGrail”) was a cryptocurrency exchange operating in Italy which was primarily focused on creating and sustaining a market for XRB/Nano. In July 2018, an Italian Court of Appeals ordered BitGrail’s assets to be frozen with the anticipation that the minimal funds remaining will eventually be used to refund investors such as Plaintiff.

38. Defendant Francesco “The Bomber” Firano (“Firano”) is an individual believed to be domiciled in Italy and the sole proprietor of BitGrail. Firano has consistently blamed the Nano Defendants for the “loss”/theft of the putative class’s funds from BitGrail.

39. In addition to those persons and entities set forth as Defendants herein, there are likely other parties who may well be liable to Plaintiff and the Class but respecting whom Plaintiff currently lacks specific facts to permit him to name such person or persons as a party defendant. By not naming such persons or entities at this time, Plaintiff is not waiving his right to amend this pleading to add such parties, should the facts warrant the addition of such parties.

CLASS ACTION ALLEGATIONS

40. A class action is the proper form to bring Plaintiff’s and the Class’ claims under Rule 23 of the Federal Rules of Civil Procedure. The proposed class is so large that joinder of all members would be impractical. Additionally, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

41. Plaintiff brings this nationwide class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all members of the following class:

All BitGrail investors and accountholders who are citizens of the United States and who, between April 1, 2017 and March 31, 2018, and who transferred bitcoins, alternative cryptocurrencies, or any other form of monies or currency to BitGrail to purchase, invest in, or stake XRB. Excluded from the class are: Defendants themselves, Defendants’ retail employees, Defendants’ corporate officers, members of Defendants’ boards of directors, Defendants’ senior executives, Defendants’ affiliates, and any and all judicial officers (and their staff) assigned to hear or adjudicate any aspect of this litigation.

1 promotional materials, NANO is a “low-latency payment platform” that “utilizes a novel block-lattice
2 architecture” on which “each account has [its] own blockchain as part of a larger directed acyclic
3 graph.” In layman’s terms, NANO purports to have created a faster, cheaper, and more scalable
4 blockchain and cryptocurrency that improves upon earlier blockchains and cryptocurrencies such as
5 the widely-popular bitcoin.

6 42. Defendant Colin LeMahieu (“LeMahieu”) is an individual domiciled in Austin, Texas
7 and is *sui juris*. According to Nano’s own published promotional materials, LeMahieu founded NANO
8 in 2014 and serves as the Company’s Lead Developer, “spearheading development of the core
9 protocol.”

10 43. Defendant Mica Busch (“Busch”) is an individual domiciled in Chicago, Illinois and is
11 *sui juris*. According to NANO’s own published promotional materials, at all relevant times, Busch was
12 a key member of Nano’s core team, serving as a “Control System Developer” for Nano’s “Residential”
13 and “Enterprise” markets.

14 44. Defendant Zack Shapiro (“Shapiro”) is an individual domiciled in Brooklyn, New York
15 and is *sui juris*. According to Nano’s own published promotional materials, at all relevant times,
16 Shapiro was a key member of Nano’s core team, as he “runs Mobile, Wallets, and Product” for the
17 company and served as the company’s head iOS Developer.

18 45. Defendant Troy Retzer (“Retzer”) is an individual domiciled in Hilton Head Island,
19 South Carolina and is *sui juris*. According to Nano’s own published promotional materials, Retzer is
20 a key member of Nano’s core team, as he manages and directs the company’s marketing and
21 Community and Public Relations efforts.

22 46. Defendant B.G. Services SRL f/k/a BitGrail SRL f/k/a Webcoin Solutions (“BitGrail”)
23 was a cryptocurrency exchange operating in Italy which was primarily focused on creating and
24 sustaining a market for XRB/Nano. In July 2018, an Italian Court of Appeals ordered BitGrail’s assets
25 to be frozen with the anticipation that the minimal funds remaining will eventually be used to refund
26 investors such as Plaintiffs.

47. Defendant Francesco “The Bomber” Firano (“Firano”) is an individual believed to be domiciled in Italy and the sole proprietor of BitGrail. Firano has consistently blamed the Nano Defendants for the “loss”/theft of the putative class’s funds from BitGrail.

48. In addition to those persons and entities set forth as Defendants herein, there are likely other parties who may well be liable to Plaintiffs and the Class but respecting whom Plaintiffs currently lack specific facts to permit them to name such person or persons as a party defendant. By not naming such persons or entities at this time, Plaintiffs are not waiving their right to amend this pleading to add such parties, should the facts warrant the addition of such parties.

CLASS ACTION ALLEGATIONS

49. A class action is the proper form to bring Plaintiffs’ and the Class’ claims under Rule 23 of the Federal Rules of Civil Procedure. The proposed class is so large that joinder of all members would be impractical. Additionally, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

50. Plaintiffs bring this nationwide class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all members of the following class:

All BitGrail investors and accountholders who are citizens of the United States and who, between April 1, 2017 and March 31, 2018, and who transferred bitcoins, alternative cryptocurrencies, or any other form of monies or currency to BitGrail to purchase, invest in, or stake XRB. Excluded from the class are: Defendants themselves, Defendants’ retail employees, Defendants’ corporate officers, members of Defendants’ boards of directors, Defendants’ senior executives, Defendants’ affiliates, and any and all judicial officers (and their staff) assigned to hear or adjudicate any aspect of this litigation.

51. This action satisfies all of the requirements of Federal Rules of Civil Procedure, including numerosity, commonality, predominance, typicality, adequacy, and superiority.

52. Members of the Class are so numerous and geographically dispersed that joinder of all members is impractical.

42. This action satisfies all of the requirements of Federal Rules of Civil Procedure, including numerosity, commonality, predominance, typicality, adequacy, and superiority.

43. Members of the Class are so numerous and geographically dispersed that joinder of all members is impractical.

44. While the exact number of class members remains unknown at this time, upon information and belief, there are at least hundreds if not thousands of putative Class members.

45. Again, while the exact number is not known at this time, it is easily and generally ascertainable by appropriate discovery.

46. It is impractical for each class member to bring suit individually.

47. ~~Plaintiff does~~ not anticipate any difficulties in managing this action as a class action.

48. There are many common questions of law and fact involving and affecting the parties to be represented.

49. When determining whether common questions predominate, courts focus on the issue of liability; and if the issue of liability is common to the class and can be determined on a class-wide basis, as in the instant matter, common questions will be held to predominate over individual questions

50. Common questions include, but are not limited to, the following:

- (i) whether the XRB offered for sale by Defendants constitute securities under federal securities laws;
- (ii) whether Defendants violated federal securities laws in offering, selling, or soliciting the offer and sale of, unregistered securities—in the form of XRB;
- (iii) whether by virtue of Defendants' custodianship over the proposed class' investments or by their control over the Nano Protocol, Defendants owed a fiduciary duty to ~~Plaintiff~~ and the proposed class and if so, whether that duty was breached;
- (iv) whether Defendants promoted XRB and BitGrail despite being aware of the exchange's shortcomings;
- (v) whether Defendants are liable for steering ~~Plaintiff~~ and the Class to BitGrail;

53. While the exact number of class members remains unknown at this time, upon information and belief, there are at least hundreds if not thousands of putative Class members.

54. Again, while the exact number is not known at this time, it is easily and generally ascertainable by appropriate discovery.

55. It is impractical for each class member to bring suit individually.

56. Plaintiffs do not anticipate any difficulties in managing this action as a class action.

57. There are many common questions of law and fact involving and affecting the parties to be represented.

58. When determining whether common questions predominate, courts focus on the issue of liability; and if the issue of liability is common to the class and can be determined on a class-wide basis, as in the instant matter, common questions will be held to predominate over individual questions

59. Common questions include, but are not limited to, the following:

- (i) whether the XRB offered for sale by Defendants constitute securities under federal securities laws;
- (ii) whether Defendants violated federal securities laws in offering, selling, or soliciting the offer and sale of, unregistered securities—in the form of XRB;
- (iii) whether by virtue of Defendants' custodianship over the proposed class' investments or by their control over the Nano Protocol, Defendants owed a fiduciary duty to Plaintiffs and the proposed class and if so, whether that duty was breached;
- (iv) whether Defendants promoted XRB and BitGrail despite being aware of the exchange's shortcomings;
- (v) whether Defendants are liable for steering Plaintiffs and the Class to BitGrail;
- (vi) whether Defendants are liable for negligently auditing, vetting and/or supervising BitGrail;
- (vii) whether statements made by Defendants about BitGrail were false or were made without due regard for the safety of those who read or heard the statements;

- (vi) whether Defendants are liable for negligently auditing, vetting and/or supervising BitGrail;
- (vii) whether statements made by Defendants about BitGrail were false or were made without due regard for the safety of those who read or heard the statements;
- (viii) whether Defendants benefitted from the ~~Class's~~ purchasing and holding of XRB;
- (ix) whether Defendants capitalized on their XRB holdings at the expense of the Class;
- (x) whether Defendants have converted the funds belonging to ~~Plaintiff~~ and the Class;
- (xi) whether Defendants owed duties to ~~Plaintiff~~ and the Class, and whether Defendants breached those duties;
- (xii) whether Defendants' conduct was unfair or unlawful;
- (xiii) whether Defendants owe restitution to ~~Plaintiff~~ and the Class;
- (xiv) whether ~~Plaintiff~~ and the Class have sustained damages as a result of Defendants' conduct; and
- (xv) whether Defendants have within their power the ability to, and should, institute an equitable remedy that would resolve the harm that has befallen ~~Plaintiff~~ and the Class.

51. These common questions of law or fact predominate over any questions affecting only individual members of the Class.

52. ~~Plaintiff's~~ claims are typical of those of the other Class members because, *inter alia*, all members of the Class were injured through the common misconduct described above and were subject to Defendants' unfair and unlawful conduct.

53. ~~Plaintiff is~~ advancing the same claims and legal theories on behalf of ~~himself~~ and all members of the Class.

- (viii) whether Defendants benefitted from the Class purchasing and holding of XRB;
- (ix) whether Defendants capitalized on their XRB holdings at the expense of the Class;
- (x) whether Defendants have converted the funds belonging to Plaintiffs and the Class;
- (xi) whether Defendants owed duties to Plaintiffs and the Class, and whether Defendants breached those duties;
- (xii) whether Defendants' conduct was unfair or unlawful;
- (xiii) whether Defendants owe restitution to Plaintiffs and the Class;
- (xiv) whether Plaintiffs and the Class have sustained damages as a result of Defendants' conduct; and
- (xv) whether Defendants have within their power the ability to, and should, institute an equitable remedy that would resolve the harm that has befallen Plaintiffs and the Class.

60. These common questions of law or fact predominate over any questions affecting only individual members of the Class.

61. Plaintiffs' claims are typical of those of the other Class members because, *inter alia*, all members of the Class were injured through the common misconduct described above and were subject to Defendants' unfair and unlawful conduct.

62. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class.

63. Plaintiffs will fairly and adequately represent and protect the interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to those of the other members of the Class.

64. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in complex consumer class action litigation of this nature, to represent them. Plaintiffs seek no relief that is antagonistic or adverse to the members of the Class.

1 ~~54. Plaintiff~~ will fairly and adequately represent and protect the interests of the Class in that
2 ~~he has~~ no disabling conflicts of interest that would be antagonistic to those of the other members of the
3 Class.

4 ~~55. Plaintiff is~~ committed to the vigorous prosecution of this action and ~~has~~ retained
5 competent counsel, experienced in complex consumer class action litigation of this nature, to represent
6 ~~him. Plaintiff seeks~~ no relief that is antagonistic or adverse to the members of the Class.

7 ~~56. The infringement of the rights and the damages Plaintiff has~~ suffered are typical of other
8 Class members.

9 ~~57. To prosecute this case, Plaintiff has~~ retained counsel experienced in class action
10 litigation and ~~has~~ the financial and legal resources to meet the substantial costs and legal issues
11 associated with this type of litigation.

12 ~~58. Class action litigation is an appropriate method for fair and efficient adjudication of the~~
13 claims involved herein. Class action treatment is superior to all other available methods for the fair
14 and efficient adjudication of the controversy alleged herein; as it will permit a large number of Class
15 members to prosecute their common claims in a single forum simultaneously, efficiently, and without
16 the unnecessary duplication of evidence, effort, and expense that hundreds of individual actions would
17 require.

18 ~~59. Class action treatment will permit the adjudication of relatively modest claims by certain~~
19 Class members, who could not individually afford to litigate a complex claim against well-funded
20 corporate defendants like Nano.

21 ~~60. Further, even for those Class members who could afford to litigate such a claim, it would~~
22 still be economically impractical. The nature of this action and the nature of laws available to ~~Plaintiff~~
23 make the use of the class action device a particularly efficient and appropriate procedure to afford relief
24 to ~~Plaintiff~~ and the Class for the wrongs alleged because: Defendants would necessarily gain an
25 unconscionable advantage if they were allowed to exploit and overwhelm the limited resources of each
26 individual Class member with superior financial and legal resources; the costs of individual suits could
27 unreasonably consume the amounts that would be recovered; proof of a common course of conduct to
28

65. The infringement of the rights and the damages Plaintiffs have suffered are typical of other Class members.

66. To prosecute this case, Plaintiffs have retained counsel experienced in class action litigation and have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

67. Class action litigation is an appropriate method for fair and efficient adjudication of the claims involved herein. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; as it will permit a large number of Class members to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that hundreds of individual actions would require.

68. Class action treatment will permit the adjudication of relatively modest claims by certain Class members, who could not individually afford to litigate a complex claim against well-funded corporate defendants like Nano.

69. Further, even for those Class members who could afford to litigate such a claim, it would still be economically impractical. The nature of this action and the nature of laws available to Plaintiffs make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs alleged because: Defendants would necessarily gain an unconscionable advantage if they were allowed to exploit and overwhelm the limited resources of each individual Class member with superior financial and legal resources; the costs of individual suits could unreasonably consume the amounts that would be recovered; proof of a common course of conduct to which Plaintiffs were exposed is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the cause of action alleged; individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation; the Class is geographically dispersed all over the world, thus rendering it inconvenient and an extreme hardship to effectuate joinder of their individual claims into one lawsuit; there are no known Class members who are interested in individually controlling the prosecution of separate actions; and the

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7 interests of justice will be well served by resolving the common disputes of potential Class members
8 in one forum.

9 ~~61. Plaintiff reserves~~ the right to modify or amend the definition of the proposed class and
10 to modify, amend, or create proposed subclasses before the Court determines whether certification is
11 appropriate and as the parties engage in discovery.

12 ~~62.~~ The class action is superior to all other available methods for the fair and efficient
13 adjudication of this controversy.

14 ~~63.~~ Because of the number and nature of common questions of fact and law, multiple
15 separate lawsuits would not serve the interest of judicial economy.

16 ~~64.~~ As a result of the foregoing, ~~Plaintiff~~ and the Class have been damaged in an amount
17 that will be proven at trial.

18 ~~65. Plaintiff has~~ duly performed all of ~~his~~ duties and obligations, and any conditions
19 precedent to ~~Plaintiff~~ bringing this action have occurred, have been performed, or else have been
20 excused or waived.

21 SUBSTANTIVE ALLEGATIONS

22 I. Background on Blockchain Technology

23 ~~66.~~ A “blockchain” is essentially a digitized, decentralized, public ledger that
24 cryptographically records, preserves, and presents information. The general idea is that each “block”
25 contains information, such as details on transactions that are made. After a “block” is created (with
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15 **SUBSTANTIVE ALLEGATIONS**

16 **I. Background on Blockchain Technology**

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21 then becomes part of the “blockchain” and an encrypted version of the information contained therein
22 becomes publicly available along with all the previous “blocks” in the chain. After this process is
23 complete, another block is created with additional information and so on and so forth.

24 76. To date, most “blockchains” are used to record transactions involving virtual currencies,
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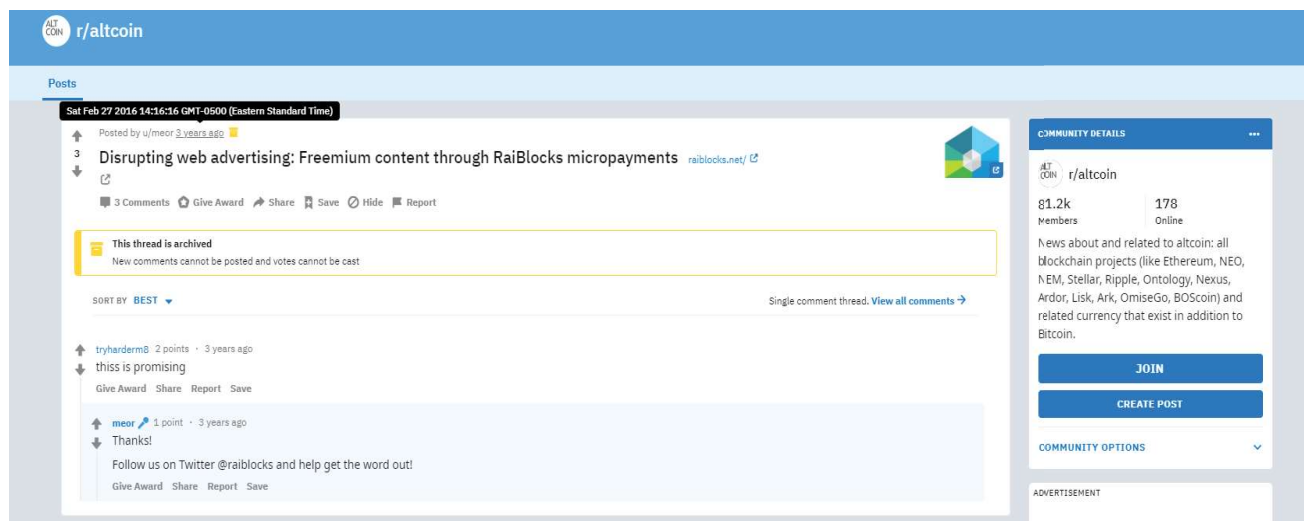
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II. Creation of XRB

XRB was originally launched in or about December 2014 under the brand name RaiBlocks. XRB was initially represented by the stock ticker “MRAI.” In mid-2016, the RaiBlock’s stock ticker symbol was changed to XRB. In January 2018, shortly before the “hack” was announced, the Nano Defendants rebranded RaiBlocks once again as “Nano.”

As early as February 2016, if not earlier, Defendant LeMahieu promoted XRB on online fora, as a free way to transact and settle micropayments:



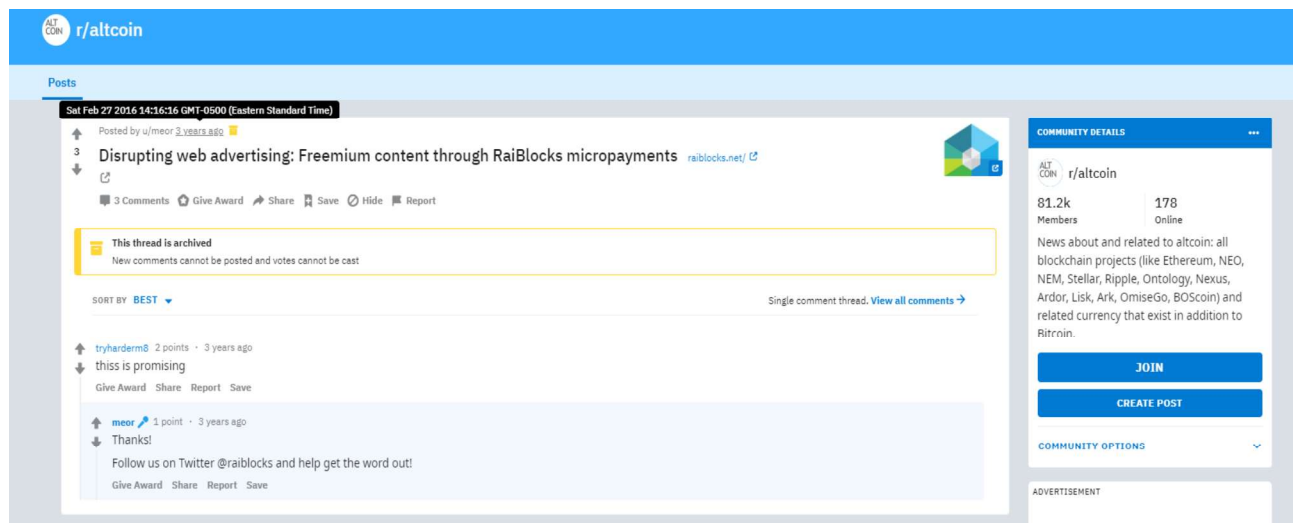
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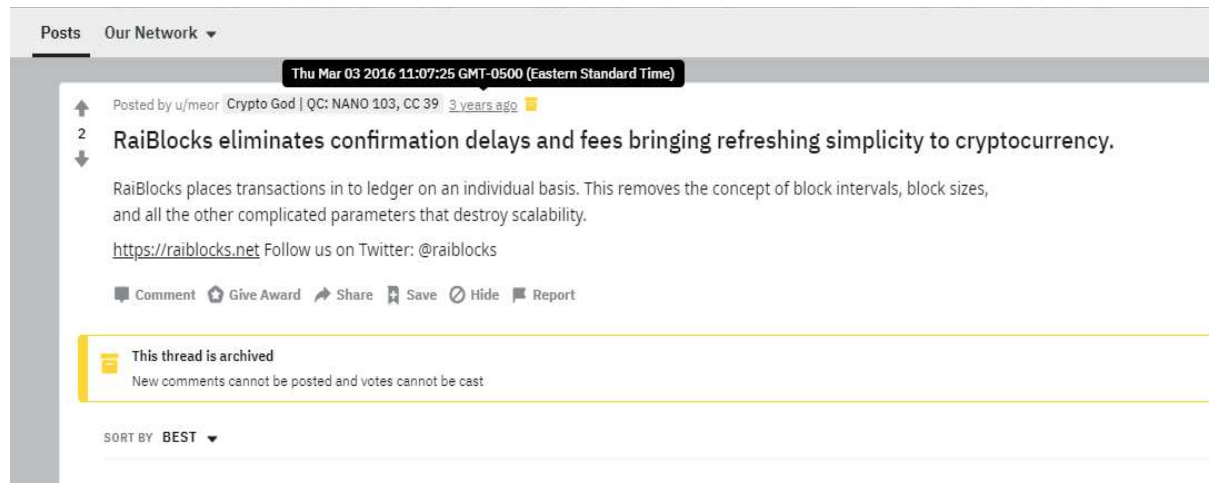


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III. XRB is Not Decentralized

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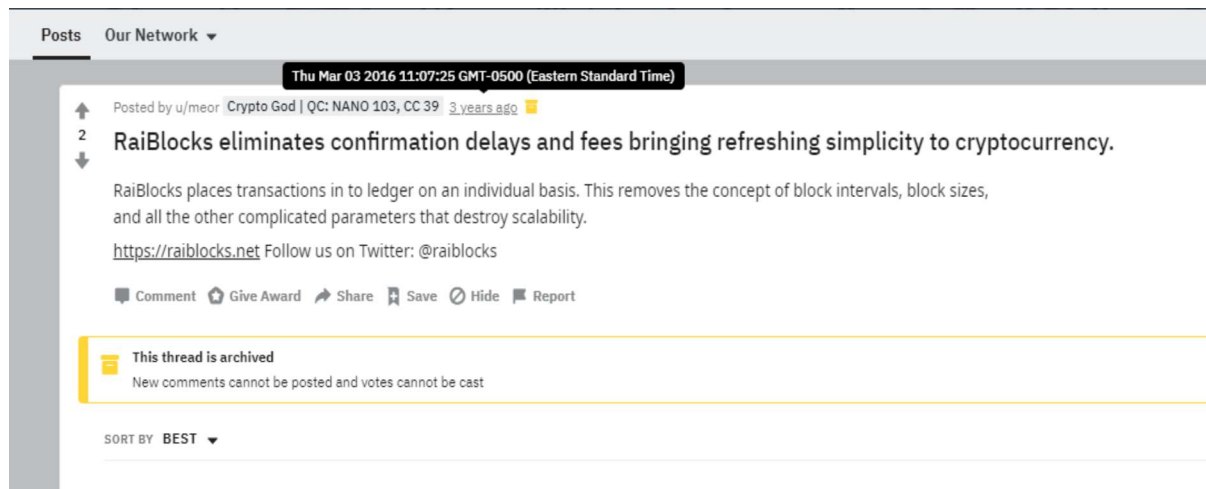
74. The Nano Defendants have made multiple representations to imply that they are merely part of a larger network that has collectively developed and maintained a decentralized protocol. Such representations from the Nano Defendants are demonstrably false. Investors in XRB rely almost exclusively on the efforts of the Nano Defendants and their core team.⁷

75. To illustrate, on or about September 10, 2018, Reddit user DeepBlueMachine presented the following questions and concerns to the Nano Team concerning its apparent centralized nature:

1. NANO centralization concerns, where 70-80% NANO are centralized even currently.
2. 90% of github commits by one person working on the team Colin.
3. Whales initially might have hired third-world country folks to solve captcha and gain control of Nano. Currently 100 addresses hold 65% of all 133 million NANO which is kind of crazy.

⁷ See <https://www.nano.org/en/team/> (last visited Oct. 8, 2018).

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85. In response, Defendant Retzer acknowledged that Nano is centralized, that Defendant LeMahieu is responsible for developing at least 90 percent of all of Nano’s underlying coding and programing, and that just 100 unique accounts own and hold at least 65 percent of the existing XRB:

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1. Nano has been steadily moving towards decentralization this year without really any active programs pushing it. As it becomes more of a focus I expect this trend to continue.
2. Colin was the lone dev for a few years, so if you look at total commits then yea, he is going to have the majority of them. He also has not led the last 2 releases.
3. The did hire people to solve the captcha. Anyone was able to do this. People buy more bitcoin miners in order to have more bitcoin.

(Emphasis added).

77. Moreover, the Nano Core Team possesses more than 50 percent of the total voting power. In addition to the Nano Core Team, a total of nine other representatives comprise the ownership of over 96 percent of the total voting power.

78. The Nano Core Team handles all aspects of business development and marketing. As Defendant LeMahieu wrote in January 2018 on Reddit, it is merely wishful thinking that non-Nano Core Team members will contribute to Nano's development, and the Nano Core Team will not wait for those contributions to materialize:

Right now we have about 12 people, half core and half business developers. I think this count is good for working on what we're doing right now which is getting wallets and exchanges worked on. **Ideally people outside our team will start developing technology around xrb taking advantage of the network effect to build more technology faster than we could internally. That being said we're going to look in a few months to see if there's anything out there people aren't developing that should be and we'll see what people we need to make it happen.**

(Emphasis added).

79. While the Nano Defendants might claim it is working towards the goal being a decentralized, that goal has yet to be achieved. As Defendant LeMahieu acknowledged in a post contrasting Nano from Ripple on Reddit on September 27, 2018, Nano is not yet decentralized (rather,

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7 ~~80.~~ Stated otherwise, the Nano Defendants wield absolute control over essentially every
8 aspect of XRB; and its value—and continued existence—is based entirely on their actions or inactions.
9 This significant control creates a special relationship giving rise to a fiduciary duty that the Nano
10 Defendants owed investors such as ~~Plaintiff~~ and the proposed Class.

11 **IV. Cryptocurrency Faucets and the XRB Faucet**

12 ~~81.~~ To incentivize the adoption and use of XRB, Defendants focused on distributing XRB
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14 distribution known as a “faucet.”

15 ~~82.~~ It is critical to keep in mind that developers utilize faucets to generate public use,
16 adoption and interest. By giving away cryptocurrency for free, individuals can amass cryptocurrency
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25 ~~84.~~ Below is an example of a faucet distributing XRB:
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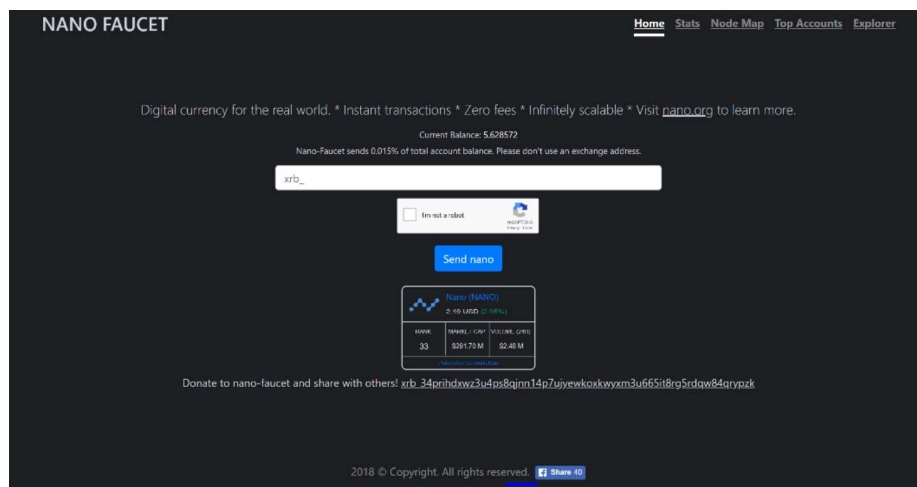
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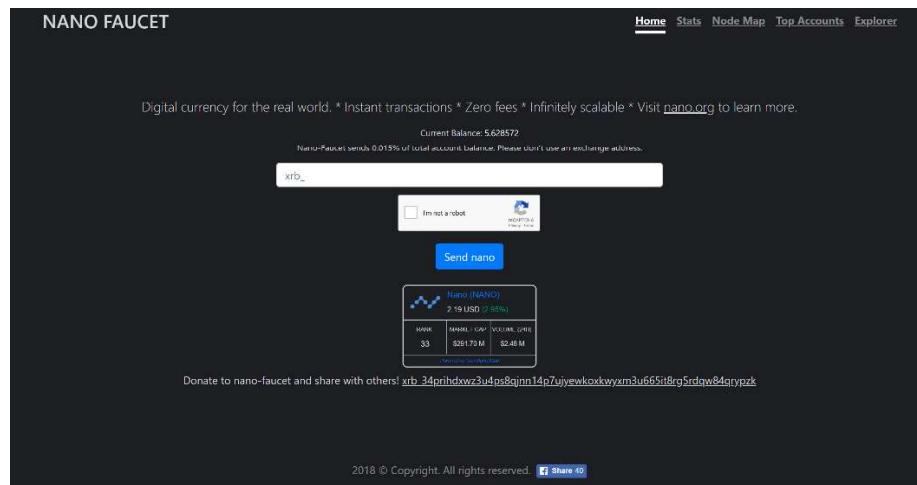
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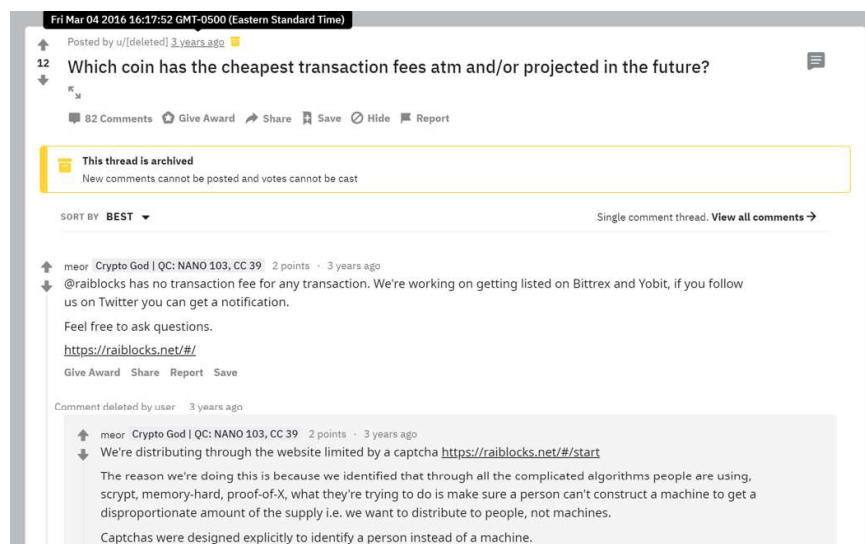
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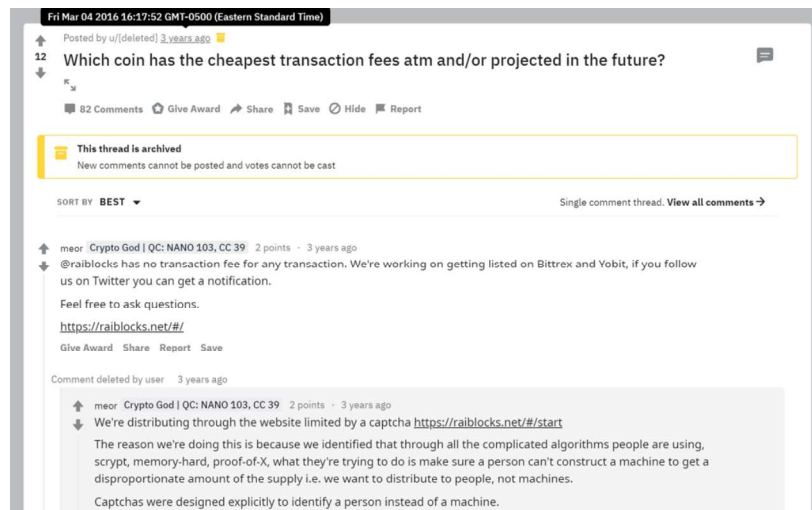
85. Once an individual completes this simple process, the faucet then distributes a (small) percentage of the total amount of cryptocurrency dedicated to the faucet. For example, a developer team might assign 10 million of its coins to a faucet, and then permit 100 individuals per hour to collect .01 percent of that allocated sum from the faucet. In practice, this means that the first 100 people to go to the faucet's website, type in their wallet address, and click on the captcha, will collect 1,000 coins per hour.

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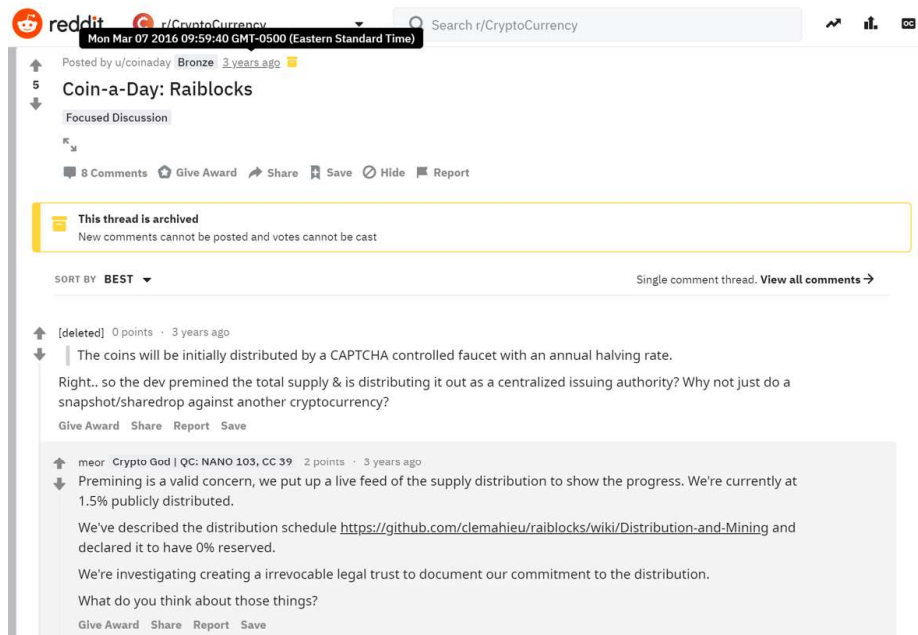
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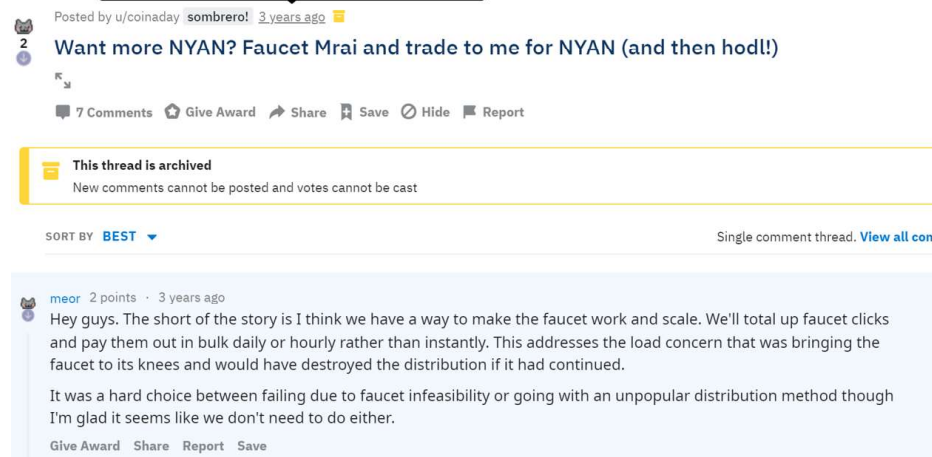
96. The Nano Defendants had exclusive control and authority over every aspect of the Nano Faucet, including how much XRB it distributed (*e.g.*, 100 XRB per click), to how many people the distributions were made (*e.g.*, the first 100 people), and the frequency of these distributions.

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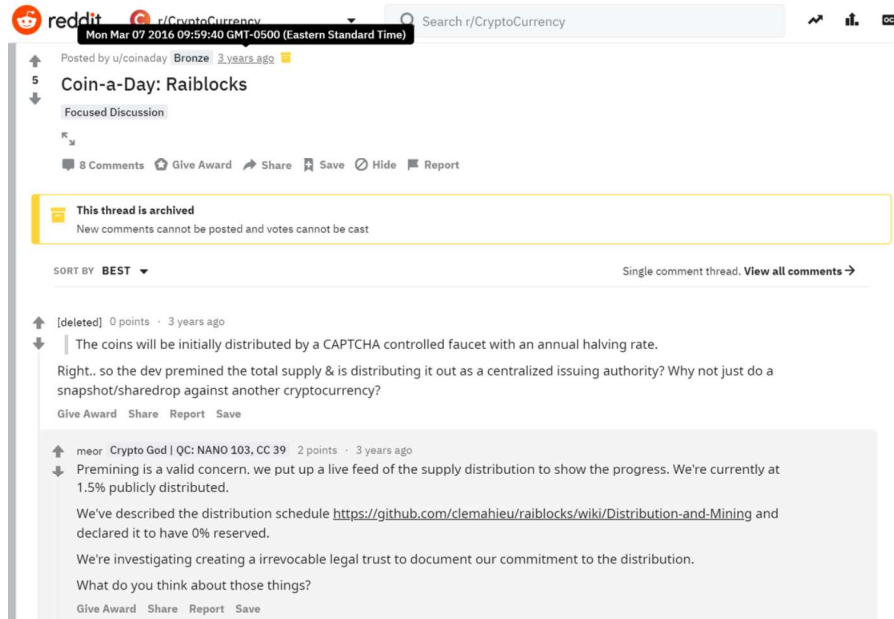
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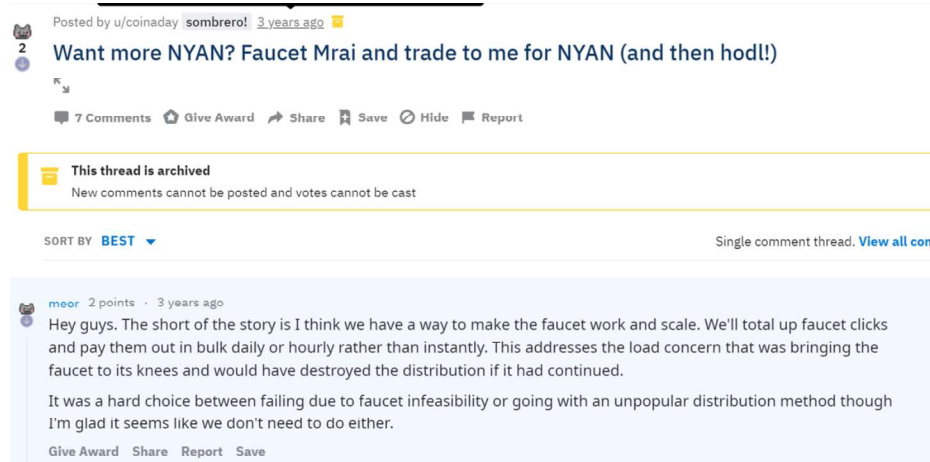
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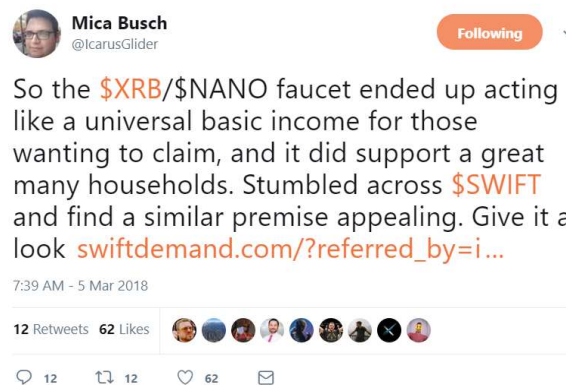


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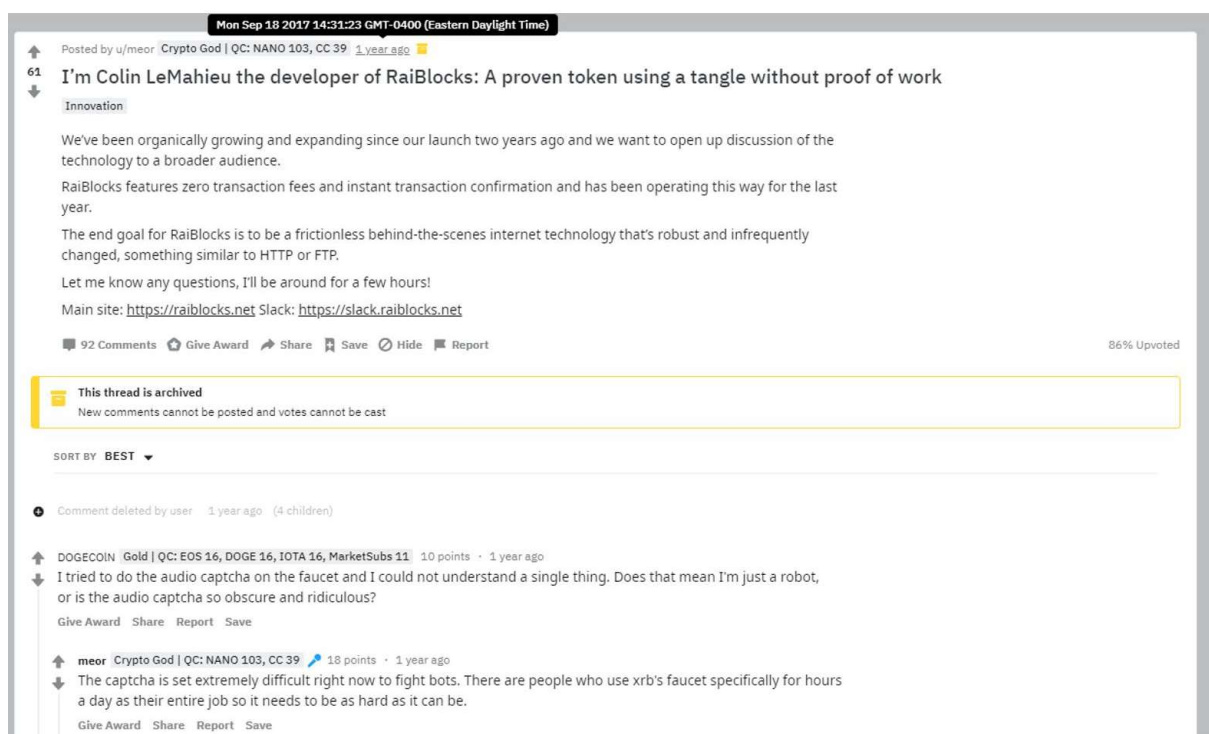


90. The Nano Faucet was an undeniable success. Defendants assigned the then-total-existing supply of XRB to the faucet. They permitted between 100 and 150 individuals to claim approximately 1,000 XRB per hour throughout that time period. By October 2017, individuals across the world had claimed more than 120 million XRB, or approximately 40 percent of the then-existing total supply of XRB.

91. In fact, the Nano Defendants acknowledged that many individuals devoted themselves to collecting XRB full-time, like a job:

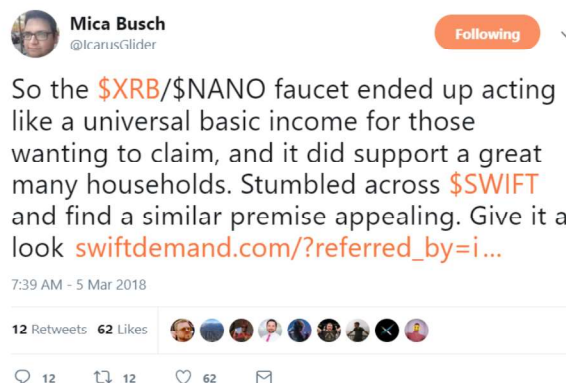


92. Similarly, Defendant LeMahieu recognized on September 18, 2017 that many “people who use xrb’s faucet specifically for hours a day [do so] as their entire job . . .

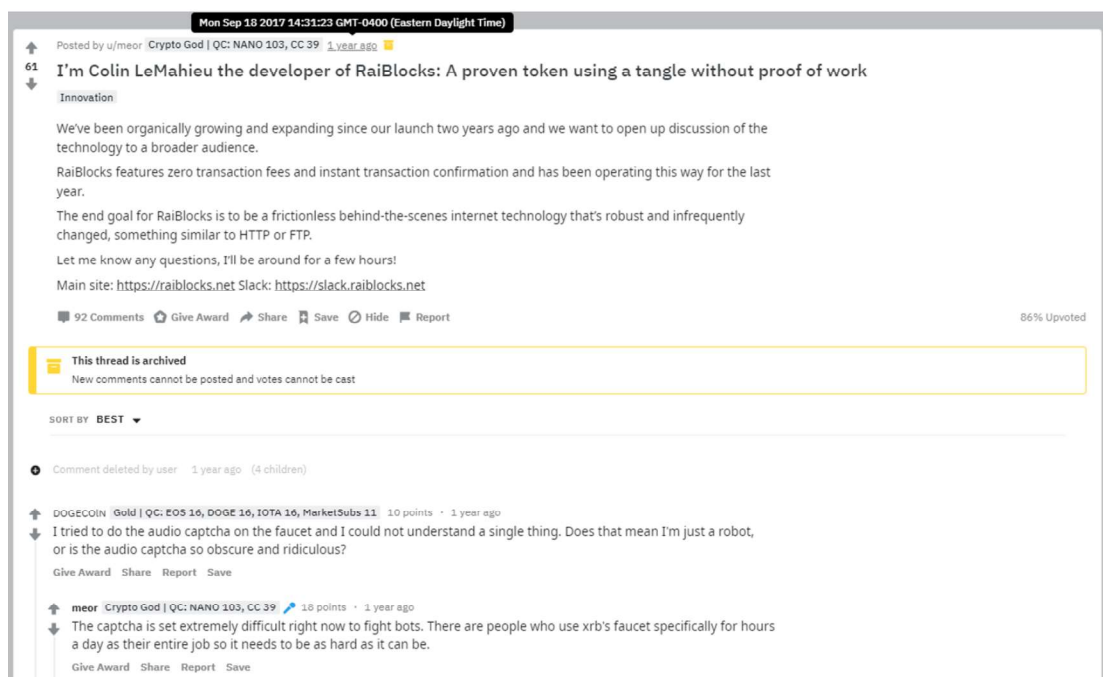


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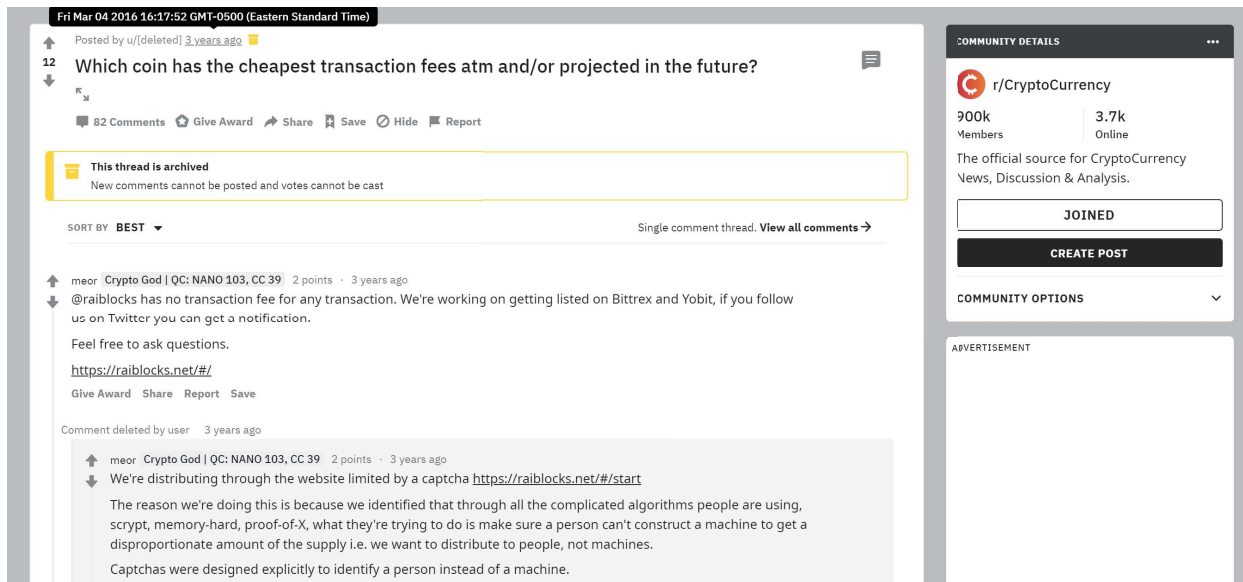
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V. The Nano Defendants' Efforts to List XRB on Established Exchanges

93. The Nano Defendants repeatedly represented to the public that they sought to list XRB on as many exchanges as possible to promote the purchase and adoption of XRB.

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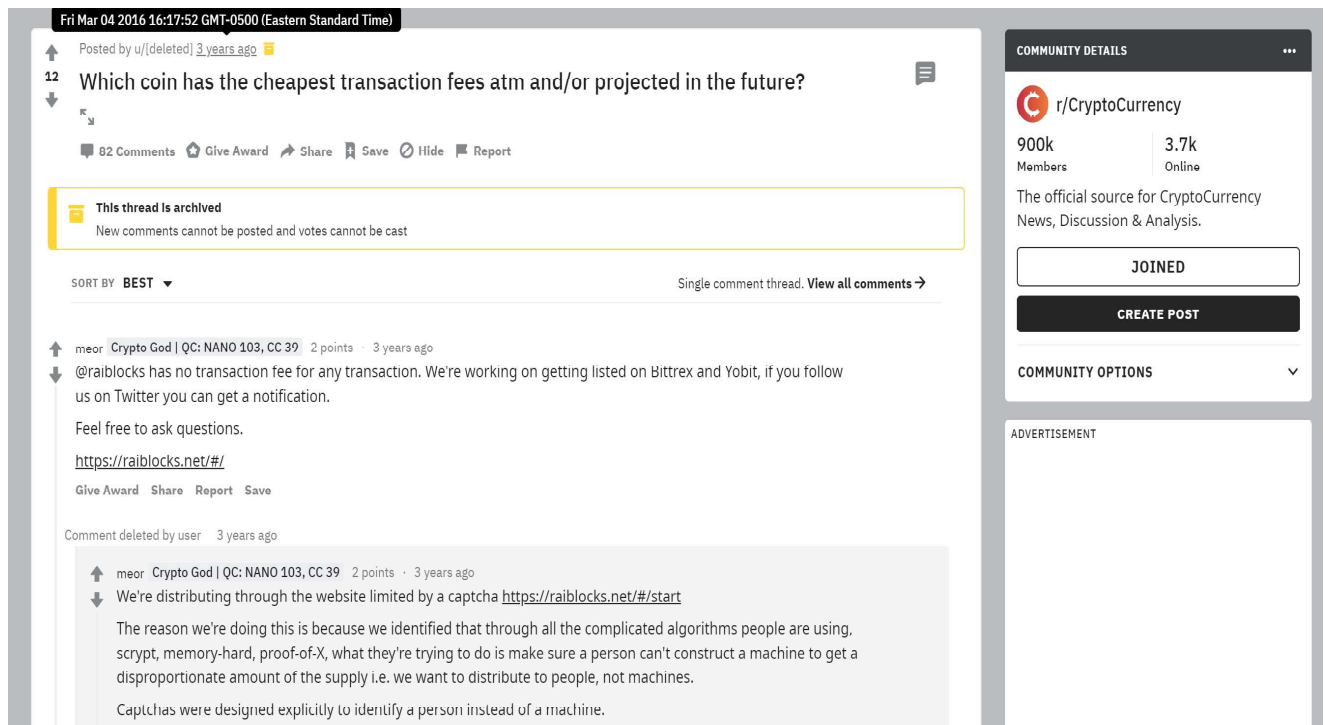
95. In other words, Defendant LeMahieu implied that XRB had an international following and demand, and that XRB would soon appreciate in value and grow in adoption by listing it on online exchanges.

96. On March 19, 2016, Defendant LeMahieu advised that XRB/Nano began marketing to the public in March 2016, which would address the lack of stability in XRB's price: "Part of the reason we've been out so long and haven't received much attention is we haven't been marketing until just about the beginning of March. We've been working on stability and the ad clearing demo, at this point we think those two goals are achieved so we're hitting the pavement."

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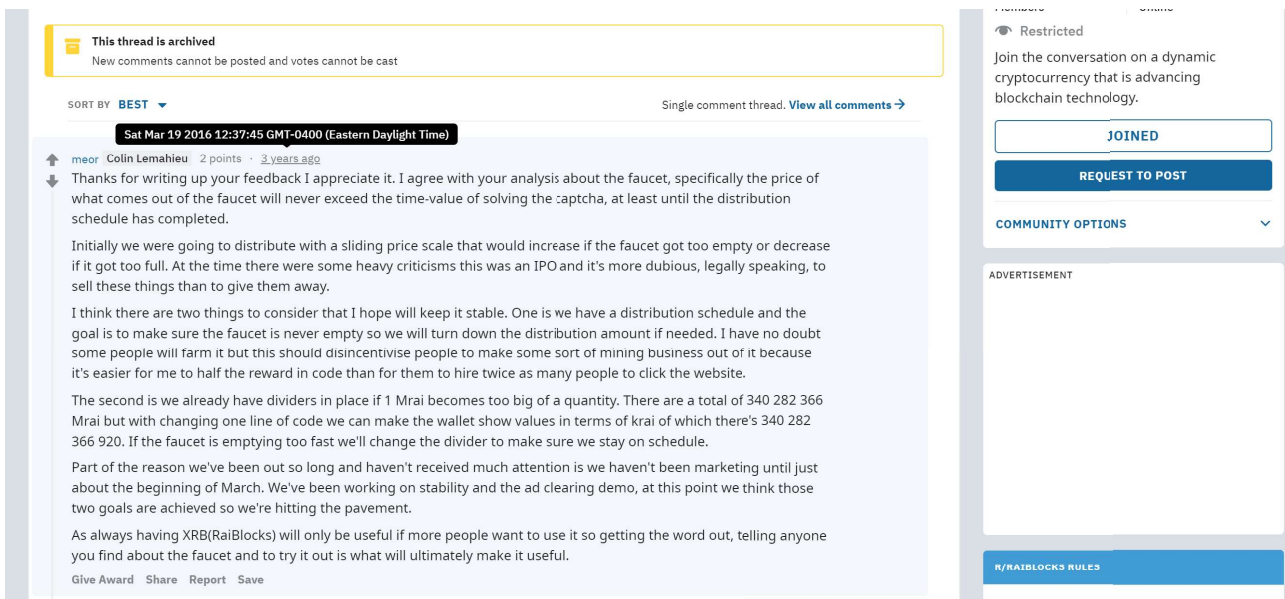
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104. In other words, Defendant LeMahieu implied that XRB had an international following and demand, and that XRB would soon appreciate in value and grow in adoption by listing it on online exchanges.

105. On March 19, 2016, Defendant LeMahieu advised that XRB/Nano began marketing to the public in March 2016, which would address the lack of stability in XRB’s price: “Part of the reason we’ve been out so long and haven’t received much attention is we haven’t been marketing until just

97. Defendant LeMahieu continued, encouraging mass promotion of XRB: “As always having XRB(RaiBlocks) [NANO] will only be useful if more people want to use it so getting the word out, telling anyone you find about the faucet and to try it out is what will ultimately make it useful.”



98. Similarly, on April 21, 2016, Defendant LeMahieu submitted a post on the Bitcointalk forum complaining about the Nano Defendants’ inability to get XRB listed on an exchange: “I’ve talked with Bittrex, Poloniex, C-Cex, many, many others over a period of almost 9 months trying to get accepted. I doubt many more are irritated at the situation than I am, if “any” of them would contact me back I’d be helping them get it listed.”

VI. XRB is Listed on Exchanges and Bona Fide Offered to the Investing Public

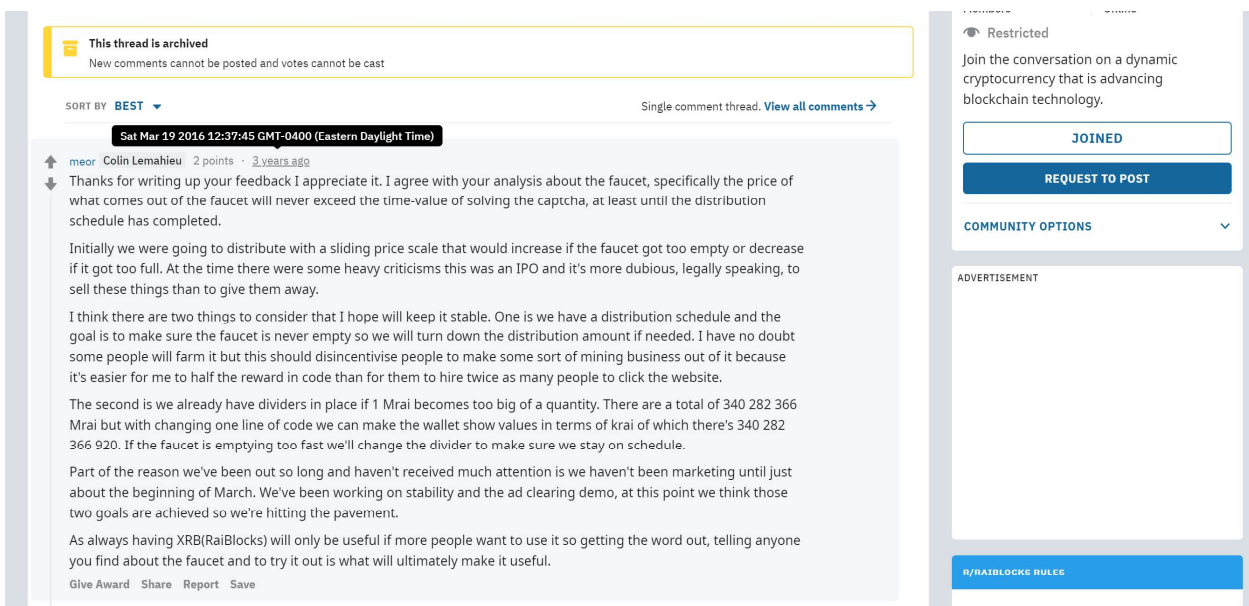
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100. Shortly thereafter, one of the numerous exchanges ~~that~~ the Nano Defendants pleaded ~~with~~ to list XRB agreed to list the asset. ~~Specifically on~~ March 4, 2017, XRB’s first listing was obtained on an obscure exchange named Cryptopia—a New Zealand-based cryptocurrency exchange that has since gone into liquidation.

about the beginning of March. We've been working on stability and the ad clearing demo, at this point we think those two goals are achieved so we're hitting the pavement."

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101. Within weeks, on March 24, 2017, Cryptopia announced that it would be delisting XRB from its platform because of “excessive load from recaptcha click farmers, death threats to support, account abuse, deposit spamming and network syncing issues.”

102. The Cryptopia delisting pressured the Nano Defendants to secure XRB’s listing on another exchange—regardless of its reputation—leading to XRB ~~becoming~~ listed on or about March 25, 2017, on a recently created and highly unreliable exchange—Mercatox.

103. XRB’s Mercatox listing immediately resulted in frustrations for the potential XRB investors attempting to purchase XRB through Mercatox. For example, on May 4, 2017, a user on the Bitcointalk forum posted:



104. In early-April 2017, the Nano Defendants were anxious to create and sustain a market for XRB so they could profit by (a) turning off the Nano Faucet thereby significantly reducing XRB’s supply and ~~consequently~~ increasing XRB’s trading price and then (b) selling their own XRB holdings at a significant premium. Given that Mercatox was highly unreliable and frequently did not process transactions, the Nano Defendants devoted a substantial amount of their effort to working with Defendant Firano on creating and launching BitGrail as quickly as possible.

VII. The Nano Defendants and Firano Create and Launch BitGrail Together

105. The Nano Defendants began working with Defendant Firano to create BitGrail’s “RaiBlocks dedicated exchange” *i.e.*, the BitGrail Exchange in approximately December 2016.

106. Indeed, Defendant LeMahieu personally worked with Defendant Firano as well as multiple former members of XRB’s then-“core” development team to create and launch the BitGrail

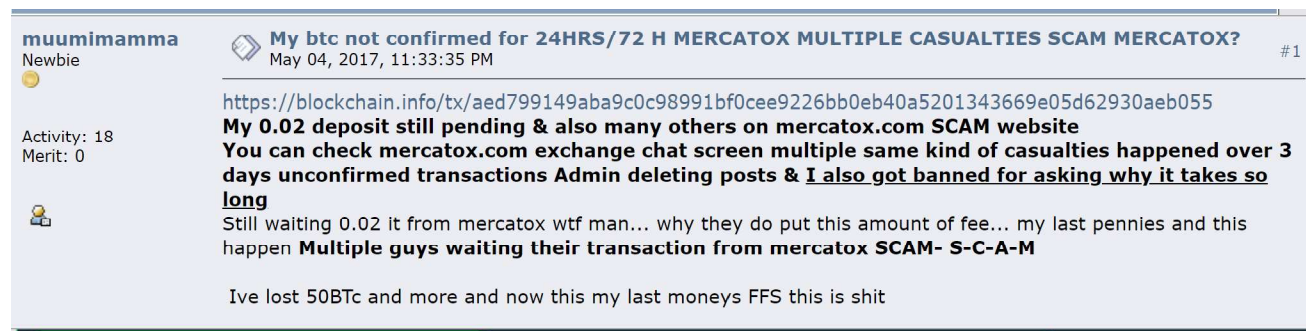
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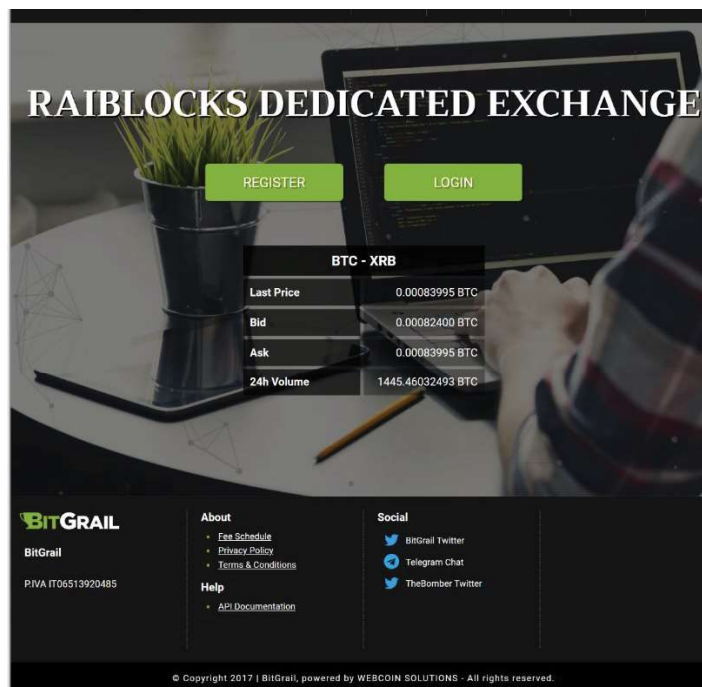
I was reached by [sic] the NANO team members to create a new exchange from the ground up that supported NANO natively, with the help of the coin designer Colin LeMahieu and the team that he had at the time.

*When BitGrail was being developed, we used the protocol that they recommended and designed and **we worked hand in hand in developing the NANO portion of the exchange. The node implementation and API were all directed to us to be used by their team.***

We spoke with their team almost on a daily basis and they recommended us how to run the NANO portion of the exchange.

Firano Statement (Emphasis added).

~~107.~~ The BitGrail Exchange launched in April 2017 (www.bitgrail.com). BitGrail was far-and-away XRB’s largest marketplace -- a result of strategic positioning and widespread marketing efforts by Defendants.



~~108.~~ Throughout the Class Period, each of the Nano Defendants remained substantially involved in the maintenance of the BitGrail Exchange’s XRB-related operations and retained

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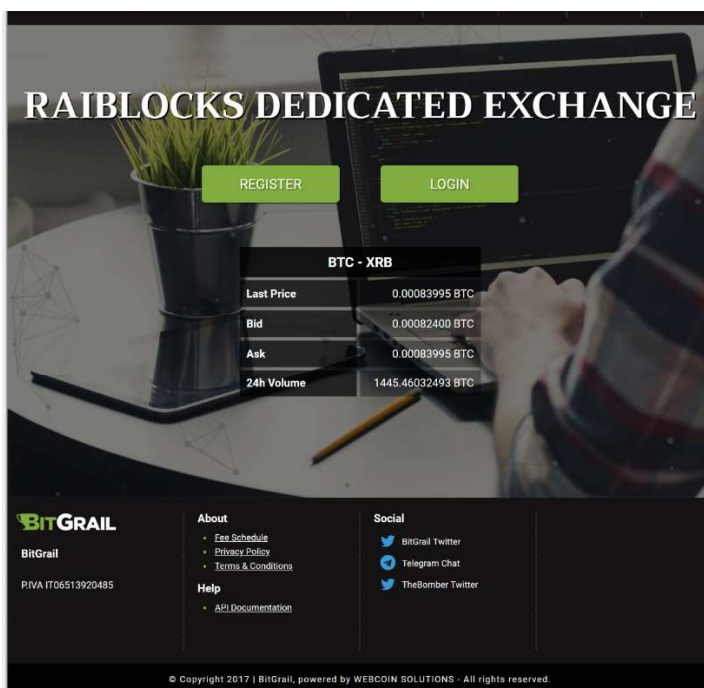
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2 explained by Defendant Firano:

3 *I started implementing the NANO team's recommended API as well as their*
4 *implementation of the nodes.*

5 *We consistently kept in touch and I was always transparent with them about*
6 *the many issues, but **the NANO team had been hesitant in allowing me to***
7 ***shut down the NANO portion of the website** because it was causing major*
8 *strain on our staff and hundreds to thousands of tickets and missed*
9 *transactions that were consistently stuck in transfer with this coin.*

10 ***

11 *As we continued to work with the NANO team consistently, the majority of*
12 *the time **I highly recommended to them that we close the markets because***
13 ***of major issues with the NANO protocol**, but they were hesitant and **forced***
14 ***me to keep it open and sometimes begged as well.***

15 *To mention again, the NANO team, especially Colin LeMahieu, had*
16 *complete access to our servers for a while as we gave him direct access to*
17 *the database and servers. That is how close **we worked as a team and as a***
18 ***preferred exchange which they forced me to keep open, despite my***
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21 *I had presented many issues to the team regarding the NANO technology*
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25 *constant support tickets and angry customers that our team had to deal with*
26 *due to the NANO node sync issues that are inherent in the technology itself,*
27 *which had nothing to do with BitGrail services.*

28 *Despite the negativity towards BitGrail and myself on social media from*
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109. Defendant Firano's description of events is also well-documented by the Nano
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that were “solving the operational challenges at @BitGrail in a high-pressure environment as a game-changing tech matures.”



VIII. Defendants Heavily Solicit the Purchase of XRB on BitGrail

A. Instructing Members of the Investing Public to Purchase XRB

~~110.~~ The Nano Defendants promoted XRB as having the following relative advantages over other cryptocurrencies: transactions in XRB are purportedly instant, carry no fees, and have no limit to their scalability. By comparison to payments via credit or debit card, XRB purports to offer nearly instantaneous settlement of transactions with no transaction fees.

~~111.~~ The Nano Defendants focused on promoting and encouraging individuals to purchase, sell, and trade XRB on online exchanges, and in particular, on BitGrail. Although the termination of the Nano Faucet briefly doubled the price of XRB to nearly seventeen cents (\$0.17), it was trading on the BitGrail Exchange that drove the price of XRB up to nearly ~~twelve dollars~~ (\$12.00) as of the February 8, 2018 loss.

~~112.~~ On April 20, 2017, the official XRB/Nano account announced that XRB was available for purchase on their recently created BitGrail Exchange:



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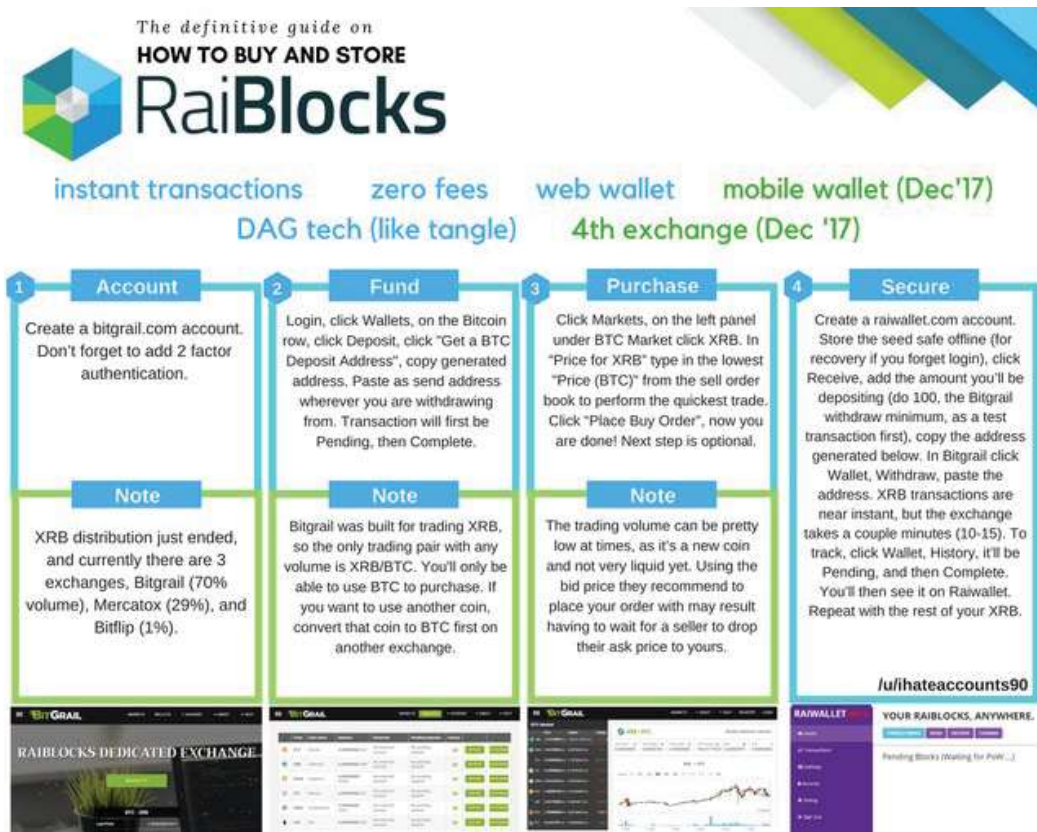
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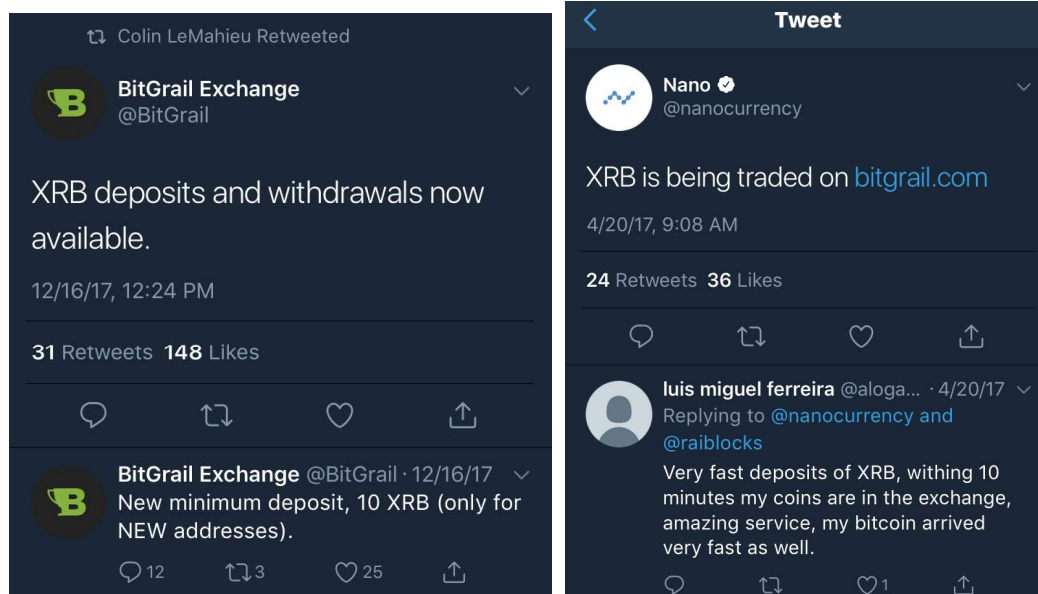
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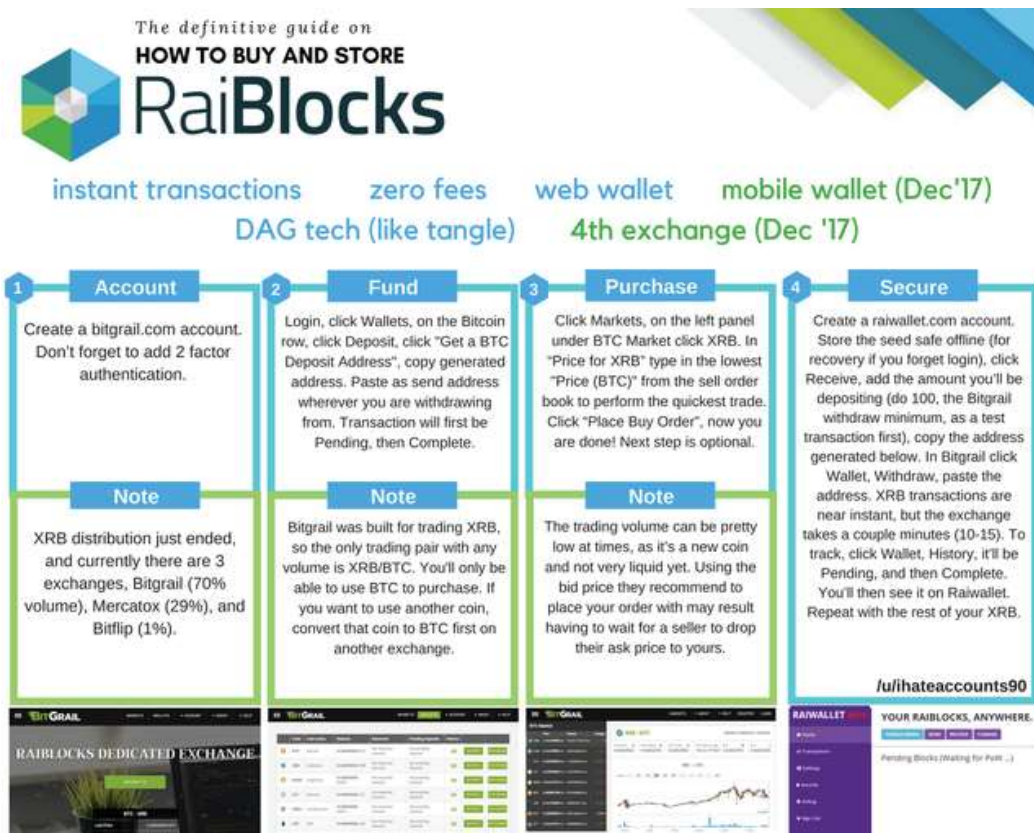


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115. As discussed in greater detail below, before the loss of 15 million XRB, the Nano Defendants expressly encouraged members of the public, including Plaintiff and the Class, to purchase, trade, and hold XRB on BitGrail.

116. Additionally, the Nano Defendants offered investment advice to XRB holders. For example, Defendant Shapiro advised one XRB holder on Twitter: “I recommend selling your xrb there and withdrawing btc even if it’s at a loss. Thanks”:



117. Similarly, Defendant Shapiro touted: “the faster \$xrb can get in blockfolio,⁸ the faster people can see their gains and losses and come to Bit Bitgrail to invest more in a coin getting more and more attention.”



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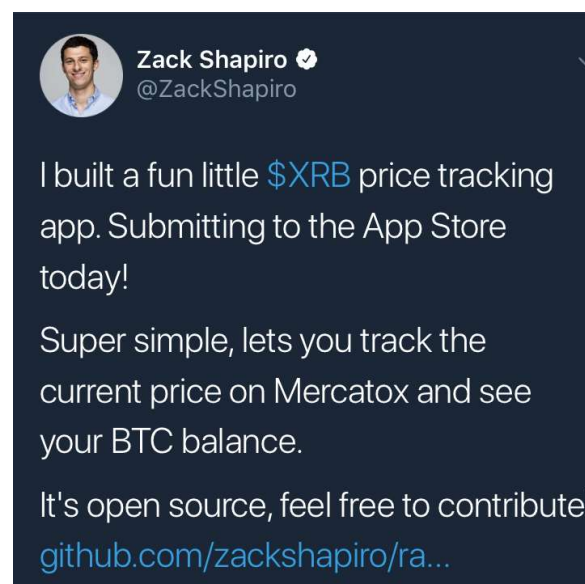
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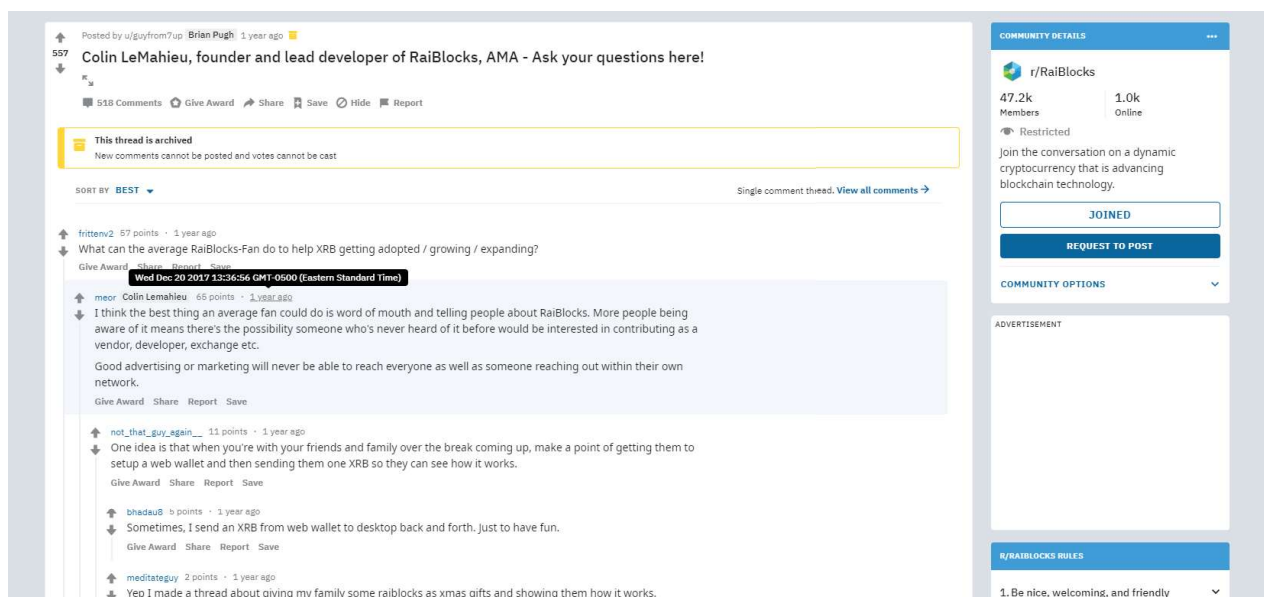


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B. Encouraging the Public to Spread the Word

~~120.~~ The Nano Defendants promoted XRB by instructing members of the public, including Plaintiff and the Class, to tell their friends, family, and acquaintances to purchase and acquire XRB.

~~121.~~ For example, on December 20, 2017, Defendant LeMahieu wrote, “I think the best thing an average fan could do is word of mouth and telling people about RaiBlocks [XRB]. More people being aware of it means there’s the possibility someone who’s never heard of it before would be interested in contributing as a vendor, developer, exchange, etc. Good advertising or marketing will never be able to reach everyone as well as someone reaching out within their own network.”



~~122.~~ In other words, the Nano Defendants encouraged and caused members of the public, including Plaintiff and the Class, to lend their reputations, trust, and goodwill on their fellow friends, family, and followers to influence and cause more members of the public to purchase and acquire CRB.

C. Increasing Social Media and Online Presence

~~123.~~ The Nano Defendants promoted XRB on various social-network platforms, including Reddit and Twitter, among others.

~~124.~~ For example, in September 2017, Defendant LeMahieu stated on Reddit’s Cryptocurrency subreddit that XRB had “been organically growing and expanding since our launch two years ago and we want to open up discussion of the technology to a broader audience.”

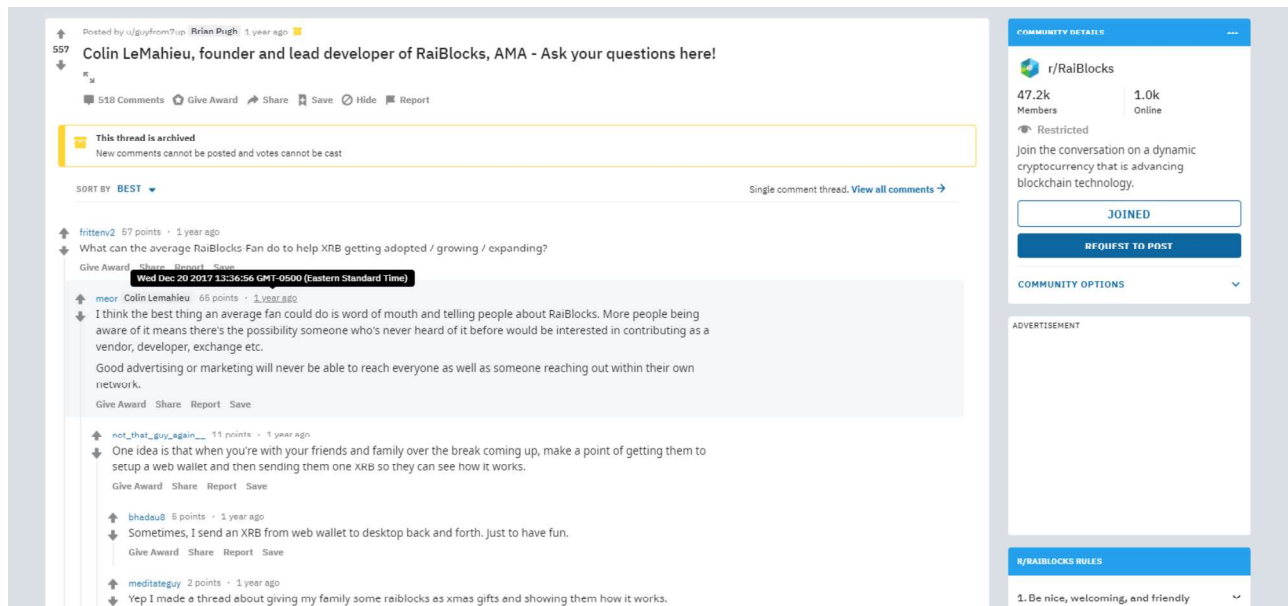
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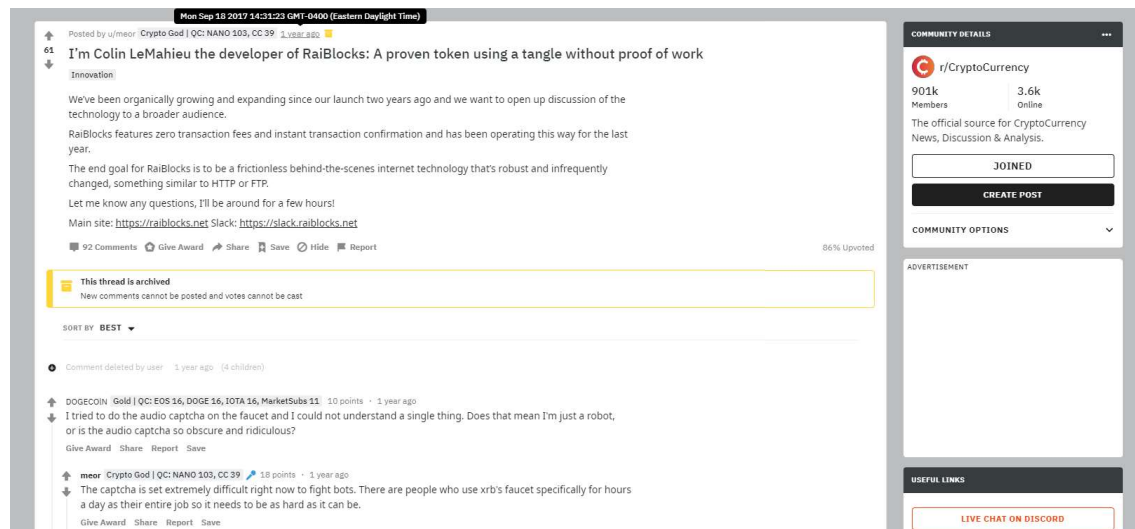
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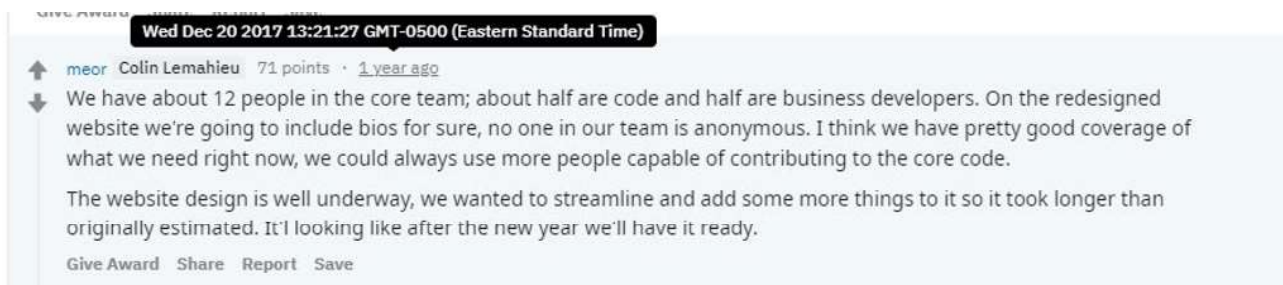
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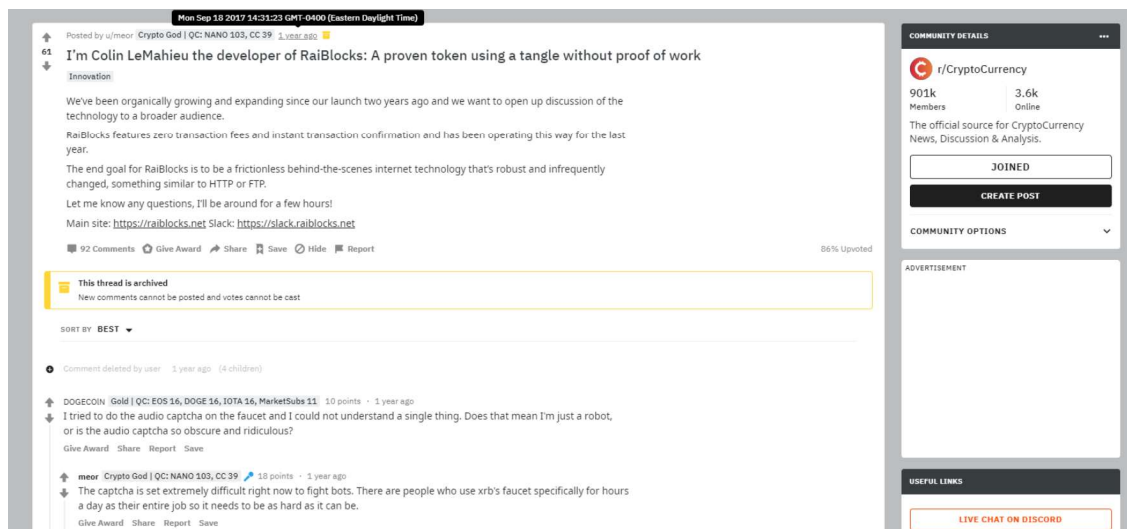
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~~127.~~ In late 2017, the Nano Defendants revamped their website and grew their team to portray themselves in a more favorable light. On December 20, 2017, Defendant LeMahieu ~~wrote~~, "We have about 12 people in the core team; about half are code and half are business developers. On the redesigned website we're going to include bios for sure"



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1 **D. Downplaying Speculation: the “HODL Mentality”**

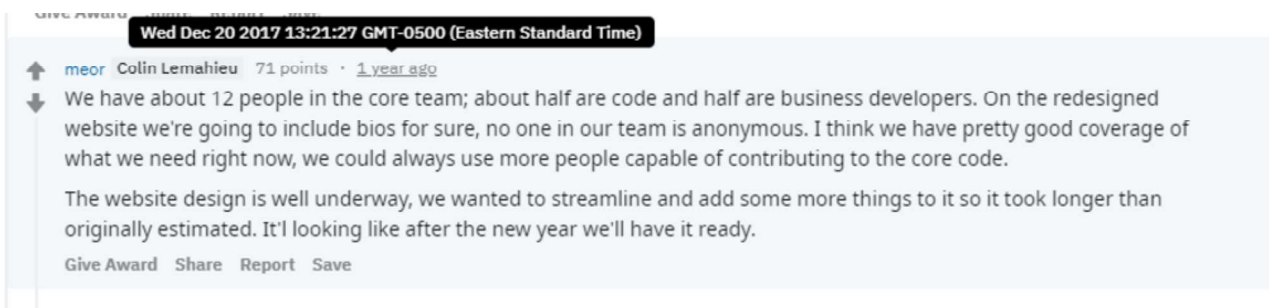
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7 opposite was true: speculation over XRB’s price was the feature and the promise of future, mass
8 adoption was the bug.

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15 **IX. The Nano Defendants Close the Nano Faucet and Extract Millions in Profits**

16 ~~130.~~ By October 2017, XRB’s trading volume on BitGrail was significant and the Nano
17 Defendants determined it was time to close the Nano Faucet and obtain millions of profits in the the
18 process.

19 ~~131.~~ The Nano Faucet was shut down on October 15, 2017. Contemporaneous with the
20 termination of the Nano Faucet, the Nano Defendants: (a) withheld seven million XRB for themselves
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~~132.~~ Consistent therewith, the price of XRB nearly doubled at that time, from \$0.09 per XRB to nearly \$0.17 per XRB:



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134. In addition, Defendant Busch wrote that the termination of the Nano Faucet eased “sell pressure.” In other words, the end of the Nano Faucet meant that individuals who acquired XRB by purchasing it with fiat or cryptocurrency translated into in holders of XRB who were less interested in quickly selling their holdings:



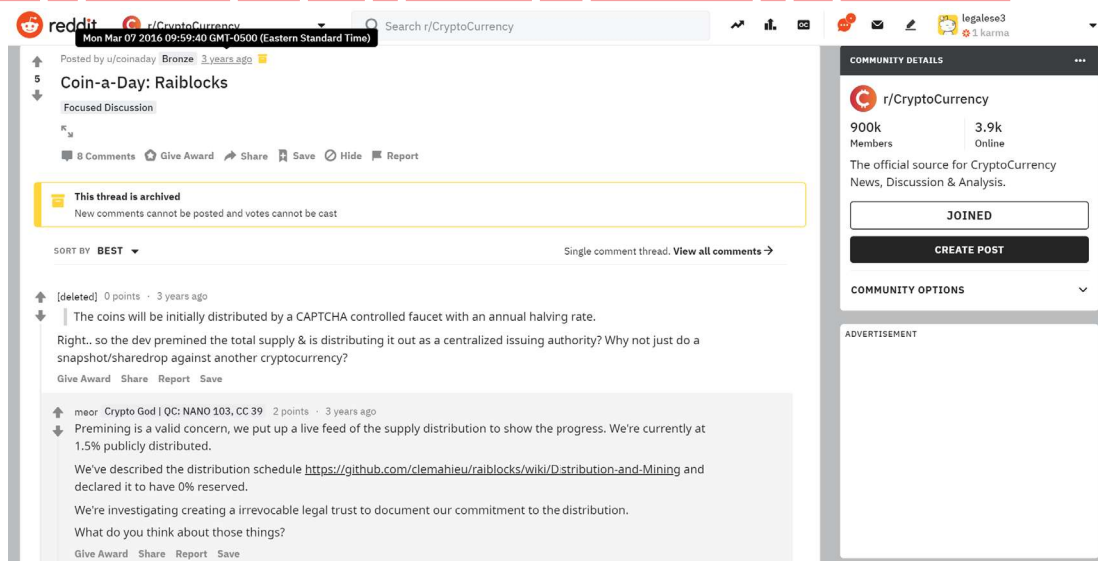
135. In sum, Defendants stood to reap enormous returns by virtue of a robust and widespread network of individuals buying, selling, and trading XRB.

136. The Nano Faucet served as the tool by which the Nano Defendants created and grew a public network of individuals invested in the development, adoption, and sustained growth of XRB.

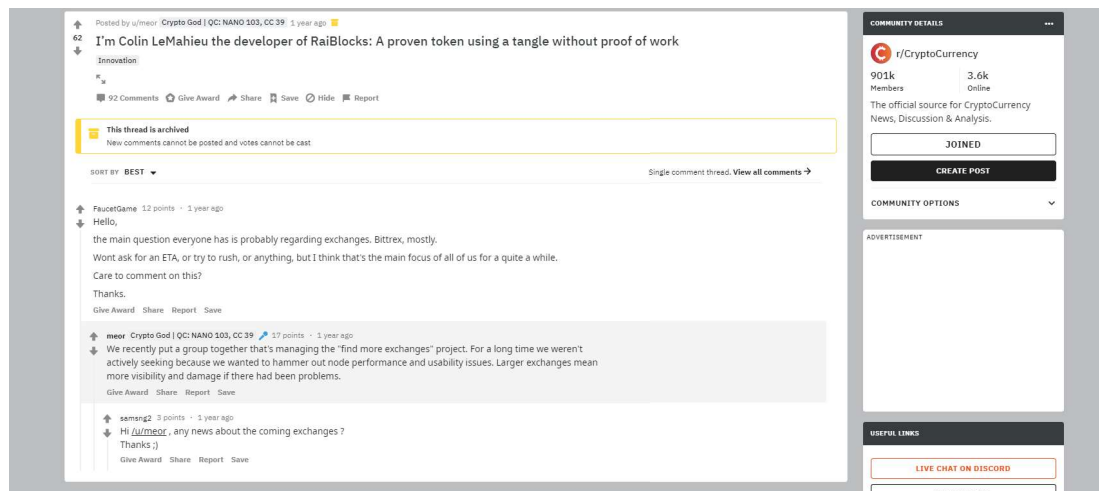
X. Defendants’ Representations Regarding their Duties and Obligations to Investors

137. At all times material, the Nano Defendants made various statements and representations that the Nano Defendants owed various duties of care and loyalty to Plaintiff and the Class at large.

138. For example, on March 7, 2016, Defendant LeMahieu wrote, “We’re investigating creating an irrevocable legal trust to document our commitment to the distribution.”

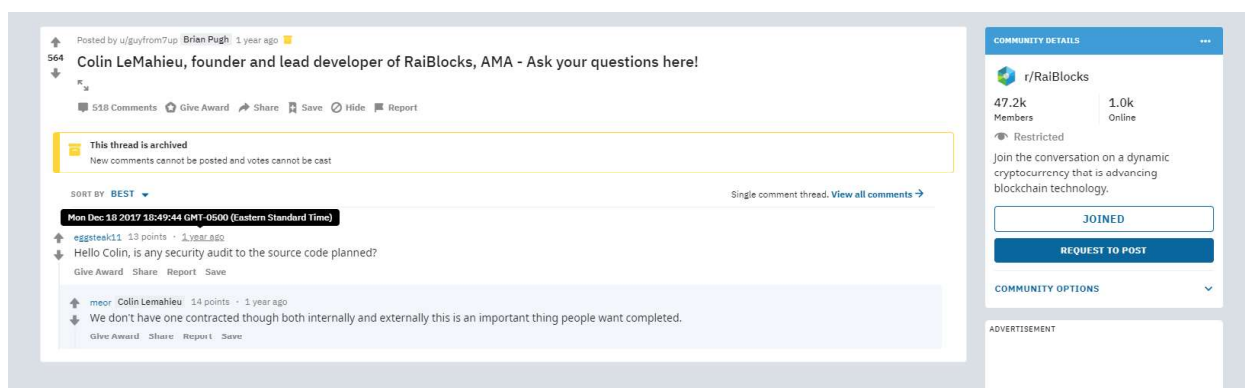


1 ~~139.~~ On September 18, 2017, Defendant LeMahieu expressly recognized that the Nano
 2 Defendants' behavior, actions, and conduct was informed by their recognition of a correlation between
 3 listing XRB on larger exchanges and ensuing damages: "For a long time we weren't actively seeking
 4 because we wanted to hammer out node performance and usability issues. **Larger exchanges mean**
 5 **more visibility and damage if there had been problems.**"



14 ~~140.~~ On December 18, 2017, a person posted on RaiBlocks' ~~subreddit~~, "Colin, is any security
 15 audit to the source code planned?" In other words, the person asked whether there would be any
 16 security testing of the XRB Protocol.

17 ~~141.~~ Defendant LeMahieu responded, acknowledging that the Nano Defendants recognized
 18 the importance of conducting a security audit to detect any deficiencies or exposure, but admitted that
 19 the Nano Defendants had failed to do so. He replied, "We don't have one contracted **though both**
 20 **internally and externally this is an important thing people want completed.**"





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1 ~~142.~~ In August 2018, when users on the Internet forum, Reddit.com, raised concern over the
2 fact that the Nano Developer's Wallet had sold over \$600,000 of XRB, Defendant Retzer assured the
3 public that the funds were sold to pay for regular expenses, including salaries. However, Defendant
4 Retzer also ~~added~~, "[w]ith the current state of the market, it makes sense for the Nano foundation to
5 hold cash to protect the dev fund in case of the price dropping in order to ensure that development
6 continues into the future."

7 ~~143.~~ The following month, in September 2018, when Reddit users again asked the Nano Core
8 Team about the large positions sold by the Nano Core Team, Defendant Retzer again acknowledged
9 the highly-speculative nature of XRB's future: "I said a few weeks ago, when the FUD [fear,
10 uncertainty, doubt] was that we were cashing some of the dev funds, that we were simply hedging
11 against a further market crash (It seems a bit backwards that there was FUD that we were selling and
12 now FUD that we are quitting because no money, but alas..)."

13 ~~144.~~ In addition, on April 9, 2018, the Nano Defendants announced that they were
14 "sponsoring" a "legal fund" purportedly designed to "provide all victims of the hack of the
15 cryptocurrency exchange BitGrail with equal access to representation" and enable such investors to
16 seek recourse against the exchange.

17 **XI. Nano's Recommendations Fail to Disclose the XRB Protocol's and the BitGrail**
18 **Exchange's Lack of Safeguards Protecting the Class' Deposits**

19 ~~145.~~ Notwithstanding the Nano Defendants' widespread promotion of BitGrail as a safe
20 haven for XRB investors, BitGrail's troubled past, uncertain present, and questionable future make the
21 Nano Defendants' recommendations highly suspect, if not outright reckless.

22 **A. The Trading Platform Problem**

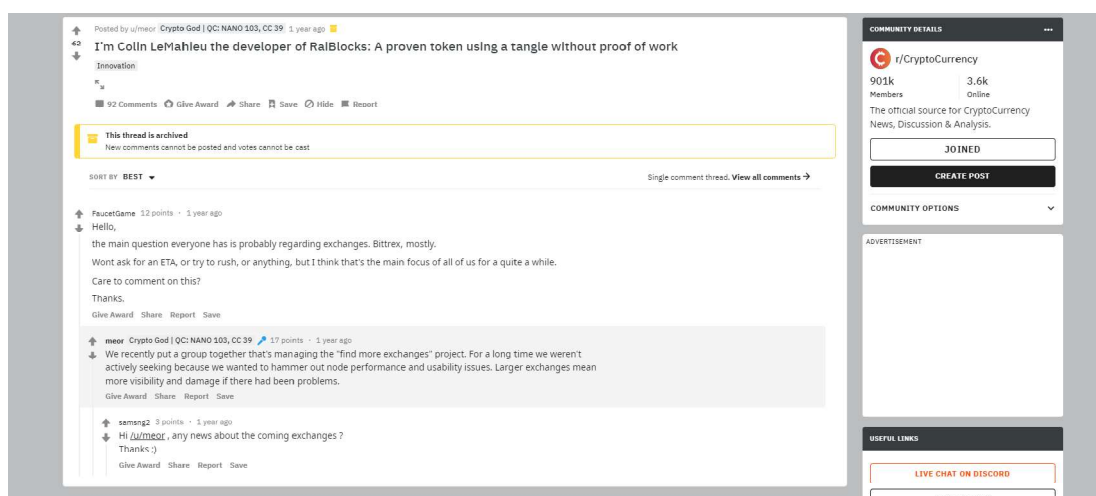
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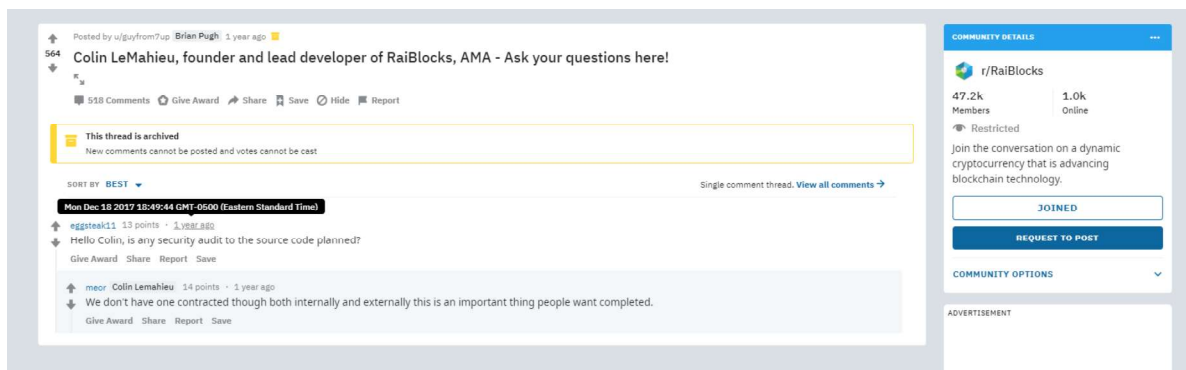
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1 ~~149.~~ BitGrail accountholders took to social media to decry the lack of reliability and
2 trustworthiness of BitGrail's operations or the reliability of the XRB Protocol itself.

3 ~~150.~~ Despite the account glitches and functionality concerns that affected so many BitGrail
4 users, the Nano Defendants did not distance themselves from the BitGrail Defendants as a direct result
5 of the problems. Rather, according to Defendant Firano, the Nano Defendants "forced" him to keep
6 XRB on BitGrail despite his warnings.

7 **B. The Verification Problem**

8 ~~151.~~ In or about mid-January 2017, BitGrail proved itself unable to timely verify its new
9 users, which left those users incapable of engaging in anything more than a very meager volume of
10 transactions -- a frustrating circumstance that rendered the users' accounts effectively useless with
11 regard to the purpose for which the accounts were opened.

12 ~~152.~~ The Nano Defendants and BitGrail had a public spat over BitGrail's verification
13 problem, and some asserted that the problem stemmed from the Nano Defendants' failure to cooperate
14 with BitGrail's business model.

15 ~~153.~~ Despite the verification issue that plagued so many BitGrail users, the Nano Defendants
16 did not distance themselves from BitGrail as a direct result of the problem.

17 **C. The \$170 Million Disappearing XRB Problem**

18 ~~154.~~ In early-February 2018, BitGrail announced that it had "lost" \$170 Million worth of
19 XRB from its exchange due to "unauthorized transactions." The "missing" XRB amounted to
20 approximately eighty percent (80%) of the XRB that BitGrail customers held in their accounts and
21 amounts to nearly fifteen percent (15%) of all XRB in existence.

22 ~~155.~~ In the aftermath of the purported XRB theft that devastated BitGrail's inventory of the
23 cryptocurrency, the Nano Defendants and the Bitgrail Defendants engaged in yet another very public
24 dispute over the cause of the problem and how it should be resolved.

25 ~~156.~~ The Nano Defendants accused Defendant Firano of trying to cover-up the event and of
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Nano Defendants, the problem stemmed from flaws related to BitGrail's software, not any issue in the XRB protocol.

~~157.~~ BitGrail denied all allegations of wrongdoing and alleged that the Nano Defendants were unwilling to cooperate in formulating a solution.

~~158.~~ In the wake of the latest of the calamities in the relationship between BitGrail and the Nano Defendants, BitGrail users have sought to move their XRB off of the BitGrail exchange into private cryptocurrency wallets; however, BitGrail has made such withdrawals impossible by suspending all account activity.

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D. Lack of Idempotence in the Nano Protocol Resulted in the Theft of the Class' XRB Worth \$170 Million

~~160.~~ Since this action's initiation, numerous additional facts have been revealed by Tribunal of Florence in Italy through its issuance of the BitGrail Decision and the Firano Decision. In reaching its decisions, the Tribunal relied upon a court-appointed expert witness to conduct an analysis of the events surrounding the "hack" of the Class' funds on BitGrail. These Decisions included the following findings:

- During the expert operations it was undisputedly ascertained and shared between the parties that the shortfall took place during the exchange's normal operation and life cycle and by regular users through their own e-mail, data, and wallet, and no stolen key, no crack of the systems, no piercing of the perimeter security program, no trojan/backdoor and no vulnerability of the mathematical protocol of the cryptocurrencies.*
- [T]he court-appointed expert ascertained that the shortfall 'was caused by multiple withdrawals (also called "double withdrawals") that occurred in circumstances which are not clearly proven. According to the statement of Mr Firano, indeed, these withdrawals occurred on occasions of the malfunctioning of the node (he makes reference to possible 'crashes' of the node), however, today we have no certainty regarding the dynamics of such malfunctions.*

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- *The shortfalls took place because the users who stole the Nano had realized*
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Withdrawal Transactions. Furthermore, each of the Defendants became aware of this issue in July 2017 when Defendant Firano raised the issue to the Nano Defendants in a private group chat.

The foregoing events plainly demonstrate that the Nano Defendants: (i) failed to adopt adequate safeguards in the Nano Protocol resulting in the theft of the Class' XRB funds on the BitGrail Exchange; (ii) concealed their actual knowledge that the Double Withdrawal Transactions were resulting in the loss of the Class' funds beginning in July 2017; and (iii) knowingly, or negligently, misrepresented that the Class' funds were "safe" on the BitGrail Exchange with their unqualified recommendations of, and public representations of trust of, BitGrail as the place where XRB should be kept and traded.

E. Defendants Breached Their Duties Owed the Class and Concealed the Theft of the Class' XRB Investments for Eight Months

Nano Defendants breached their legal duties of care relating to their management of XRB when they failed to, *inter alia*, (i) implement idempotence into the XRB Protocol thereby permitting the theft of the Class' XRB by the use of Double Withdrawal Transactions; (ii) disclose material information related to the XRB Protocol and the BitGrail Exchange's operation while discussing information, knowledge, and exercising authority on all things XRB-related at panels, conferences, and online social networks; (iii) permit Defendant Firano to shut down the BitGrail Exchange online despite having actual knowledge, or recklessly disregarding, the ongoing theft of XRB from accountholders on the BitGrail Exchange from July 2017 through January 2018; (iv) disclose to Plaintiff and the Class the fact that the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018; (v) take reasonable measures to ensure that the exchanges upon which XRB was bought, sold, and traded employed, utilized, and followed adequate security measures and protocols; (vi) know or confirm that the material representations and statements regarding BitGrail's safety and security were accurate; and (vii) Conduct a security audit of the XRB Protocol.

Additionally, despite being fully aware of the Double Withdrawal Transactions as of July 2017, the Nano Defendants issued countless statements falsely or negligently assuring Plaintiff and the Class that their funds were safe on the BitGrail Exchange.

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174. As demonstrated in the BitGrail Decision and the Firano Decision, the Class’ funds were stolen through an exploitation of the Nano Protocol’s lack of idempotence by way of Double Withdrawal Transactions. Furthermore, each of the Defendants became aware of this issue in July 2017 when Defendant Firano raised the issue to the Nano Defendants in a private group chat.

165. For example:



166. Similarly:



167. The Nano Defendants publicly promoted BitGrail as a safe and reliable place for XRB holders to stake and exchange their XRB, and XRB holders relied on that endorsement by the Nano Defendants in choosing the exchange that would house their valuable assets.

175. The foregoing events plainly demonstrate that the Nano Defendants: (i) failed to adopt adequate safeguards in the Nano Protocol resulting in the theft of the Class' XRB funds on the BitGrail Exchange; (ii) concealed their actual knowledge that the Double Withdrawal Transactions were resulting in the loss of the Class' funds beginning in July 2017; and (iii) knowingly, or negligently, misrepresented that the Class' funds were "safe" on the BitGrail Exchange with their unqualified recommendations of, and public representations of trust of, BitGrail as the place where XRB should be kept and traded.

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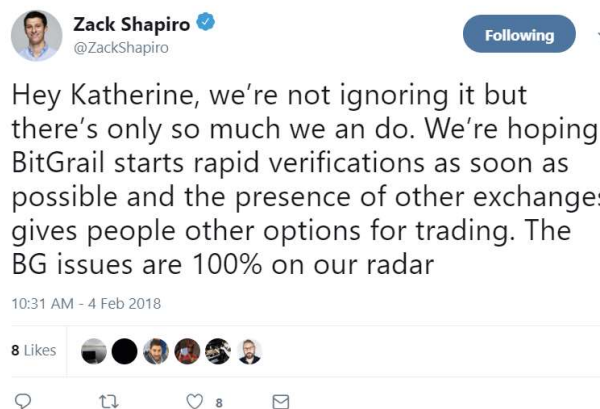
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168. For example, when one concerned XRB holder questioned the Nano Defendants about the sagacity of relying upon the otherwise unknown BitGrail exchange and its founder and principal operator, Francesco “The Bomber” Firano, Defendant Shapiro publicly represented on Twitter that he speaks with Mr. Firano every day and that both Mr. Firano and BitGrail can be trusted:



169. As another example, a mere four days before the loss of \$170 million worth of the Class’s XRB was announced, the Nano Defendants represented that all of BitGrail’s issues were “100% on our radar”:



170. Based on Defendants’ assurances, assistance, promotion, and instruction, BitGrail became the predominate and nearly exclusive home for XRB. XRB/BTC⁹ was the most popular trading

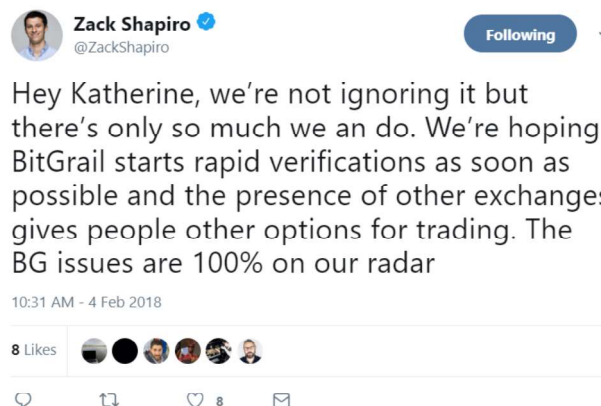
⁹ “XRB/BTC” represents the exchange of XRB for bitcoin (BTC), the most widely-used and recognizable alternative currency in the world. In other words, participants on the exchange traded bitcoin for XRB (and vice versa).

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1 pair at BitGrail and constituted more than eighty percent (80%) of BitGrail's overall trading volume.
2 Moreover, Plaintiff's and the Class's detrimental reliance on Defendants' misstatements,
3 misrepresentations, and omissions of material fact, includes but is not limited to, causing Plaintiff to
4 purchase, acquire, own, hold, and refrain from selling their respective XRB before suffering their
5 respective losses on February 8, 2018.

6 ~~171.~~ However, in early-February 2018, when BitGrail announced that it had "lost" \$170
7 Million worth of XRB from its exchange -- approximately eighty percent (80%) of the XRB that
8 BitGrail customers held in their accounts -- the Nano Defendants suddenly sought to put ~~more~~ distance
9 between themselves and the BitGrail ~~Defendants than even the Atlantic Ocean could provide.~~ So much
10 so that Defendant Firano described Nano, his relationship with the Company and their subsequent
11 falling out as follows:

12 *As we continued to work with the NANO team consistently, the majority of*
13 *the time I highly recommended to them that we close the markets because*
14 *of major issues with the NANO protocol, but they were hesitant and forced*
me to keep it open and sometimes begged as well.

15 *To mention again, the NANO team, especially Colin LeMahieu had*
16 *complete access to our servers for a while as we gave him direct access to*
17 *the database and servers. That is how close we worked as a team and as a*
18 *preferred exchange which they forced me to keep open, despite my constant*
warnings about the technology and problems we were having for months.

19 ***

20 *The Nano team was relentless in directing users to the BitGrail exchange*
21 *despite the major issues I had consistently warned them about. . . .*

22 ***

23 *They used me and BitGrail to gain entry into the virtual cryptocurrency*
24 *market.*

25 ~~172.~~ Simply stated, the Nano Defendants created the XRB currency, created the BitGrail
26 Exchange with Defendant Firano, directed XRB investors to place their assets at BitGrail (an exchange
27 that they essentially controlled); caused the loss of the Class' XRB by failing to include idempotence
28 in the Nano Protocol; concealed the fact that the Class' funds were, in fact, not "safe" on the BitGrail

1 183. Based on Defendants' assurances, assistance, promotion, and instruction, BitGrail
2 became the predominate and nearly exclusive home for XRB. XRB/BTC⁷ was the most popular trading
3 pair at BitGrail and constituted more than eighty percent (80%) of BitGrail's overall trading volume.
4 Moreover, Plaintiff's and the Class's detrimental reliance on Defendants' misstatements,
5 misrepresentations, and omissions of material fact, includes but is not limited to, causing Plaintiff to
6 purchase, acquire, own, hold, and refrain from selling their respective XRB before suffering their
7 respective losses on February 8, 2018.

8 184. However, in early-February 2018, when BitGrail announced that it had "lost" \$170
9 Million worth of XRB from its exchange -- approximately eighty percent (80%) of the XRB that
10 BitGrail customers held in their accounts -- the Nano Defendants suddenly sought to put immense
11 distance between themselves and the BitGrail Defendants. So much so that Defendant Firano described
12 Nano, his relationship with the Company and their subsequent falling out as follows:

13 *As we continued to work with the NANO team consistently, the majority of*
14 *the time I highly recommended to them that we close the markets because*
15 *of major issues with the NANO protocol, but they were hesitant and forced*
 me to keep it open and sometimes begged as well.

16 *To mention again, the NANO team, especially Colin LeMahieu had*
17 *complete access to our servers for a while as we gave him direct access to*
18 *the database and servers. That is how close we worked as a team and as a*
19 *preferred exchange which they forced me to keep open, despite my constant*
 warnings about the technology and problems we were having for months.

20 ***

21 *The Nano team was relentless in directing users to the BitGrail exchange*
22 *despite the major issues I had consistently warned them about. . . .*

23 ***

24 *They used me and BitGrail to gain entry into the virtual cryptocurrency*
25 *market.*

26 7 "XRB/BTC" represents the exchange of XRB for bitcoin (BTC), the most widely-used and
27 recognizable alternative currency in the world. In other words, participants on the exchange traded
28 bitcoin for XRB (and vice versa).

Exchange, and when nearly all of the XRB “disappeared”, the Nano Defendants disavowed any responsibility for the harm the XRB investors suffered.

~~173.~~ At all times relevant hereto, Lemahieu, Busch, Shapiro, and Retzer each took to social media outlets -- including Twitter, Facebook, Medium, and Reddit -- to promote XRB and BitGrail as a purported safe haven at which investors could stake and trade their XRB for profit.

~~174.~~ Unfortunately, in their fervent push to drive XRB investors to BitGrail, the Nano Defendants failed in their due diligence or knowingly disregarded many material concerns about the Nano Protocol and BitGrail’s operations, safety, and reliability.

~~XII. XRB Are Unregistered Investment Contract Securities~~

~~175.~~ In addition to failing to implement necessary safeguards in the Nano Protocol and recklessly directing XRB investors to utilize BitGrail, XRB themselves are securities, which the Nano Defendants offered and sold without either registering with the necessary governmental authorities or obtaining an exemption from such registration.

~~176.~~ Under the Securities Act, a “security” is defined as including any “note,” “investment contract,” or “instrument commonly known as a ‘security.’” See 15 U.S.C. §§ 77b(a)(1). Here, XRB are investment contracts. In *SEC v. W.J. Howey Co.*, the United States Supreme Court established a three-part test to determine whether an offering, contract, transaction, or scheme constitutes an investment contract.¹⁰ Under the test articulated in *Howey*, a contract, transaction, or scheme is an “investment contract” if it involves: (i) the investment of money; (ii) in a common enterprise; (iii) with the expectation of profits to come solely from the efforts of others.

~~177.~~ When determining whether a security has been offered and sold, the focus must be on the economic realities underlying the transaction. Here, the economic realities are that Plaintiff and the Class invested funds and assets to stake and trade XRB -- each of which they expected would lead to lucrative returns. Investors in XRB used cryptocurrency or fiat currency to purchase the XRB required

¹⁰ See *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946); see also *Intern. Bhd. of Teamsters v. Daniel*, 421 U.S. 837, 852 (1979) (noting that the *Howey* test is not the only test for determining a security but has been held to embody “all the attributes that run through all of the Court’s decisions defining a security”).

186. At all times relevant hereto, Lemahieu, Busch, Shapiro, and Retzer each took to social media outlets -- including Twitter, Facebook, Medium, and Reddit -- to promote XRB and BitGrail as a purported safe haven at which investors could stake and trade their XRB for profit.

COUNT I
Negligence
Against Nano Defendants

189. The Defendants had a legal duty to exercise reasonable care with respect to the management of XRB, including but not limited to maintaining the XRB Protocol; listing XRB on a secure exchange; promoting the use of secure exchanges; properly vetting the exchanges on which XRB was bought, sold and traded; making accurate representations and statements to Plaintiffs and the Class about the safety of the Class' XRB on the BitGrail Exchange; dissuading the buying, selling, and trading of XRB on BitGrail after multiple red flags and other issues arose; creating a functional, performing, and non-defective XRB token; and conducting a security audit of the XRB Protocol, among other legal duties or care.

46

1 to make their investments. Accordingly, Plaintiff's and the Class' investment of cryptocurrency or fiat
2 currency constitutes an investment of money for the purposes of determining whether an investment
3 involved a security.

4 178. Plaintiff and the Class were investing in a common enterprise with the Nano Defendants,
5 as the Nano Defendants fund their operations through their ongoing sale of XRB and thus, the fortunes
6 of both the Class and the Nano Defendants rise and fall with the success of XRB -- which has at all
7 relevant times been entirely reliant on the Nano Defendants' actions, primarily the Nano Defendants'
8 ability to maintain and expand the functionality of XRB, thus providing financial returns to investors.

9 179. In short, it is indisputable that the Nano Defendants were selling investment contracts
10 and that any success from the Nano Defendants' development, maintenance, and expansion of the
11 functionality of XRB -- as well as any future potential increases to the value of XRB -- were entirely
12 dependent on the Nano Defendants' actions.

13 180. Despite XRB's clear characterization as a "security," the Nano Defendants did not
14 register XRB with any regulatory authority in the United States as required by federal securities laws.

15 181. Furthermore, the Nano Defendants neither applied for, nor received, an exemption from
16 registration of XRB with regulatory authorities in the United States as required by federal securities
17 laws.

18 182. U.S. securities regulation focuses on, *inter alia*, mandatory disclosures that require
19 issuers of securities to make publicly available certain information that regulators deem material to
20 investors. When those necessary disclosures are not made -- and regulators have not granted an
21 exemption to the normal requirement of such disclosures -- investors are at risk of undue harm. Indeed,
22 in the instant matter, XRB investors were lured into investing their funds and assets in the self-issued
23 cryptocurrency being offered by Defendants and were further lured by the Nano Defendants into
24 staking and exchanging those investments at BitGrail. Without adequate protections in place, Plaintiff
25 and the Class have suffered millions of dollars of harm, and the Nano Defendants -- without regard to
26 the regulatory environment in which they live and operate their business -- have tried to distance
27
28

1 themselves from that harm and have refused to institute the remedy well within their grasp, simply
2 because it does not suit their own financial interests.

3 **ADDITIONAL FACTS SPECIFIC TO LEAD PLAINTIFF FABIAN**

4 183. Commencing in or around April-May 2017, Plaintiff Fabian learned about XRB by
5 reading social media posts touting XRB -- including but not limited to those published on Twitter --
6 exemplars of which are incorporated throughout this Amended Complaint.

7 184. As part of his due diligence in learning more about XRB, Plaintiff Fabian followed (i.e.,
8 subscribed to) the Twitter feeds of Defendant LeMahieu, Defendant Shapiro, and other people related
9 to XRB.

10 185. After months of following the representations published by those people and relying on
11 the truthfulness of their representations, Plaintiff Fabian began investing in XRB.

12 186. On or about August 16, 2017, Plaintiff Fabian purchased 1.62457112 bitcoin (BTC) on
13 Coinbase's website (www.coinbase.com) using a credit card. The total purchase price was \$7,104.30
14 with each bitcoin worth \$4,308.83.

15 187. On August 22, 2017, Plaintiff Fabian transferred his entire 1.62457112 BTC to Bittrex,
16 a cryptocurrency exchange (www.bittrex.com).

17 188. In further reliance on the social media representations he had read from Defendant
18 LeMahieu, Defendant Shapiro, and other people related to XRB -- and in reliance on the representations
19 he had read about the safety and security of both the Nano Protocol and the BitGrail exchange --
20 Plaintiff Fabian turned to BitGrail as the exchange where he would purchase and stake his XRB.

21 189. On August 31, 2017, Plaintiff Fabian opened an account on BitGrail and then transferred
22 .66971933 BTC from his Bittrex bitcoin wallet to BitGrail. At the time, the .66971933 BTC had a
23 value of approximately \$3,220.

24 190. To open and manage his BitGrail account, Plaintiff logged onto BitGrail's website from
25 his home and followed the instructions provided.

26 191. On September 1, 2017, the .66971933 BTC became available on BitGrail, and Plaintiff
27 Fabian used that entire sum to purchase approximately 21,143 XRB.
28

192. On December 12, 2017, Plaintiff Fabian transferred \$2,850.00 to BitGrail to purchase another 2,000 XRB.

193. As of December 12, 2017, Plaintiff Fabian purchased and held on BitGrail 23,143 XRB with a total purchase price of \$6,070.00.

194. In deciding to invest in XRB, open an account at BitGrail, and stake his investment holdings there, Plaintiff Fabian reviewed and relied upon the Nano Defendants' promotions on social media channels and/or statements made on the Nano Defendant's own website representing that BitGrail is a safe and reliable exchange on which to purchase and stake XRB.

195. Shortly before Plaintiff Fabian lost control and possession of his 23,143 XRB on BitGrail, he transferred 110 XRB to a separate XRB wallet off of BitGrail. Therefore, he owned and held a total of 23,033 XRB in his BitGrail wallet.

196. The 23,033 XRB had a market value of approximately \$275,000 as of February 8, 2018.

COUNT I

Claim for Violation of Section 12(a)(1) of the Securities Act of 1933 Against All Defendants

197. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

198. Section 12(a)(1) grants Plaintiff a private right of action against any person who offers or sells a security in violation of Section 5, and states that such person,

Shall be liable . . . to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction; to recover the consideration for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

199. Between April 2017 and March 2018, in connection with the offer and sale of XRB, Defendants unlawfully made use of means or instruments of transportation or communication in interstate commerce or of the mails for the purposes of offering, selling, or delivering unregistered securities in direct violation of the Securities Act.

200. The offer and sale of XRB constituted the offer and sale of unregistered securities under controlling federal law. XRB exhibit the following particular hallmarks of a security under the *Howey* test: (a) to receive any XRB, an investment of money, in the form of cryptocurrency and/or fiat currencies was required; (b) the investment of money was made into the common enterprise that is Defendant NANO and its ability to provide value to the XRB through the functionality and popularity of its self-created XRB; and (c) the success of the investment opportunities and any potential returns thereon were entirely reliant on Defendants' ability to maintain and expand the functionality and popularity of XRB, thus providing financial returns to investors.

201. Each of the individual Defendants constitute "seller[s]" under the Securities Act and are thus equally liable for selling unregistered securities in connection with XRB.

202. As such, Defendants have participated in the offer and sale of unregistered securities in violation of the Securities Act and are liable to Plaintiff and the Class for rescission and/or compensatory damages in excess of \$5 million.

COUNT H

Claim for Violation of Section 15(a) of the Securities Act of 1933 Against the Individual Defendants

203. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

204. Due to their ownership in and/or control over the business operations of Defendant Nano and/or BitGrail, Defendants LeMahieu, Busch, Shapiro, Retzer and Firano acted as controlling persons of Nano and/or BitGrail within the meaning of Section 15(a) of the Securities Act as alleged herein.

205. By virtue of their positions as managers, directors, and key members of Nano's core team and by their participation in and/or awareness of Defendant Nano's operations, Defendants Colin LeMahieu, Mica Busch, Zack Shapiro, Troy Retzer and Firano had the power to influence and control and did influence and control, directly or indirectly, the decision making relating to the development and success of XRB, including the decision to engage in the sale of unregistered securities in furtherance thereof.

206. By virtue of the foregoing, Defendants Colin LeMahieu, Mica Busch, Zack Shapiro, Troy Retzer and Francesco “The Bomber” Firano are liable to Plaintiff and the Class as control persons of Defendant NANO and/or BitGrail under Section 15(a) of the Securities Act for damages in excess of \$5 million.

COUNT III

Breach of Contract **Against BitGrail Defendants**

207. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

208. The BitGrail Defendants had a legally binding contract with Plaintiff and the Class.

209. The BitGrail Defendants breached their contracts with Plaintiff and the Class by failing to safeguard their funds and disabling the ability for accountholders to withdraw their XRB assets from the exchange.

210. The BitGrail Defendants breaches are the proximate cause of the damages suffered by Plaintiff and the Class.

211. Defendants are liable to Plaintiff and the Class for damages resulting from Defendant BitGrail’s breaches of contract in excess of \$5 million.

COUNT IV

Breach of Implied Contract **Against Nano Defendants**

212. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

213. The Nano Defendants had a valid, binding and enforceable contract with Plaintiff and the Class that was not reduced to writing, but was implied based on the Nano Defendants’ conduct.

214. The Nano Defendants’ implied promises to Plaintiff and the Class included, but were not limited to: (i) the XRB Protocol maintained adequate safeguards to prevent the theft of the Class’ XRB; (ii) the exchanges upon which XRB was bought, sold, and traded employed—particularly the BitGrail Exchange which the Nano Defendants created and with Defendant Firano—utilized and followed adequate security measures and protocols; (iii) the Nano Defendants vetted the exchanges on

1 which XRB was purchased, sold, staked, and traded, and (iv) that the Class' XRB funds were "safe"
2 on the BitGrail Exchange.

3 215. The Nano Defendants breached their implied contracts with the class by:

- 4 a. Encouraging Plaintiff and the Class to buy, sell, stake, and trade XRB
5 on the BitGrail Exchange despite knowing that the XRB Protocol nor
6 the exchange had adequate security measures and protocols;
- 7 b. Making material representations and statements to Plaintiff and the
8 Class regarding BitGrail's - and other exchanges - safety and security;
- 9 c. Failing to implement idempotence into the XRB Protocol thereby
10 permitting the theft of the Class' XRB by the use of Double Withdrawal
11 Transactions;
- 12 d. Forcing Defendant Firano to keep the BitGrail Exchange online despite
13 having actual knowledge, or recklessly disregarding, the ongoing theft
14 of XRB from accountholders on the BitGrail Exchange from July 2017
15 through January 2018;
- 16 e. Concealing from Plaintiff and the Class the fact that the Double
17 Withdrawal Transactions resulted in the theft of the Class' funds from
18 July 2017 through January 2018; and
- 19 f. Continuing to promote the buying, selling, and trading of XRB on
20 BitGrail after multiple red flags and other issues arose.

21 216. The Nano Defendants' foregoing breaches proximately caused damages suffered by the
22 Plaintiff and the Class.

23 217. Plaintiff and the Class suffered damages in excess of \$5 million.

24 COUNT V

25 Breach of Fiduciary Duty

26 Against Defendants

27 218. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and
28 further alleges:

29 219. The BitGrail Defendants had a fiduciary relationship with, and owed fiduciary duties or
30 loyalty of care to, Plaintiff and the Class as the owners of the BitGrail Exchange. The BitGrail
31 Defendants breached their duties to Plaintiff and the Class by: (i) failing to safeguard the Class' funds
32 on the BitGrail Exchange; (ii) permitting the Nano Defendants to force them to keep the BitGrail
33 Exchange online despite having actual knowledge of, or recklessly disregarding, the fact that the Class'

1 funds were being stolen by exploitation of the XRB Protocol through the Double Withdrawal
2 Transactions; and (iii) concealing the fact that the Class' funds were being stolen from July 2017
3 through January 2018.

4 220. The Nano Defendants had a fiduciary relationship with, and owed fiduciary duties or
5 loyalty and care to, Plaintiff and the Class due to their relationship with Plaintiff and the Class both in
6 their capacity as the developers of XRB and as well as from their creation of BitGrail and involvement
7 in, or control over, the BitGrail Exchange's XRB-related operations.

8 221. The Nano Defendants' status as fiduciaries to the class is evidenced by their:

- 9 a. Serving as the primary source of information, knowledge, and authority
10 on all things XRB-related, such as at panels, conferences, online social
11 networks (e.g., Twitter, Reddit, etc.);
- 12 b. Maintaining exclusive control over the XRB Protocol;
- 13 c. Commissioning Firano to create the BitGrail Exchange as an XRB
14 dedicated exchange;
- 15 d. Partnering with the BitGrail Defendants to create the BitGrail Exchange
16 and involvement in maintaining the exchange's XRB-related
17 operations;
- 18 e. Exercising exclusive control over the decision to list XRB on BitGrail;
- 19 f. Maintaining superior and unique knowledge of the inadequacy of the
20 XRB Protocol's safeguards—specifically its lack of idempotence—and
21 the BitGrail Exchange's lack of secondary measures to prevent the
22 Double Withdrawal Transactions;
- 23 g. Updating Nano Protocol to include idempotence on February 16, 2018
24 after the Class' XRB had already been stolen from exploitation of the
25 Double Withdrawal Transactions;
- 26 h. Promoting and encouraging Plaintiff and the Class to buy, sell, and trade
27 XRB on BitGrail;
- 28 i. Making repeated assurances to Plaintiff and the Class that BitGrail was
a safe and secure exchange, downplaying and explaining away red flags,
and maintaining constant contact and involvement in issues involving
trading XRB on BitGrail;
- j. Having the exclusive ability and acknowledging the need to conduct a
security audit of the XRB Protocol;
- k. Advising the public that Nano Defendants were contemplating creating
and administering trust fund for distribution of XRB;

- l. Creating legal fund to help Plaintiff and Class recover their respective losses; and
- m. Acknowledging that Nano Defendants were aware that listing on larger exchanges would lead to responsibility for larger damages.

222. The Nano Defendants breached its fiduciary duties owed to Plaintiff and the Class by failing to, inter alia:

- a. Failing to implement idempotence into the XRB Protocol thereby permitting the theft of the Class' XRB by the use of Double Withdrawal Transactions;
- b. Failing to disclose material information related to the XRB Protocol and the BitGrail Exchange's operation while discussing information, knowledge, and exercising authority on all things XRB-related at panels, conferences, and online social networks;
- c. Forcing Defendant Firano to keep the BitGrail Exchange online despite having actual knowledge, or recklessly disregarding, the ongoing theft of XRB from accountholders on the BitGrail Exchange from July 2017 through January 2018;
- d. Concealing from Plaintiff and the Class the fact that the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;
- e. Making repeated assurances to Plaintiff and the Class that BitGrail was a safe and secure exchange, downplaying and explaining away red flags, and claiming to maintain constant contact and involvement in issues involving trading XRB on BitGrail;
- f. Failing to conduct a security audit of the XRB Protocol;
- g. Creating legal fund to divert attention and blame away from the Nano Defendants; and
- h. Failing to take responsibility for damages that arose in connection with listing XRB on BitGrail.

223. The Nano Defendants are liable to Plaintiff and the Class for damages resulting from the Nano Defendant's breaches of their fiduciary duties to Plaintiff and the Class in excess of \$5 million.

COUNT VI

**Aiding and Abetting Breach of Fiduciary Duty
Against Nano Defendants**

224. Plaintiff ~~re-alleges~~, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

225. The Nano Defendants aided and abetted the BitGrail Defendant's breaches of their fiduciary duties to Plaintiffs and the Class by forcing Defendant Firano to keep the BitGrail Exchange online permitting the ongoing theft of the Class' funds and concealing their knowledge that the Class' XRB deposits on BitGrail were being stolen through exploitation of the XRB Protocol's lack of idempotence from July 2017 through January 2018.

226. Nano Defendants are liable to Plaintiff and the Class for damages resulting from Nano Defendant's breaches of their fiduciary duties to Plaintiff and the Class in excess of \$5 million.

COUNT VII

**Negligence
Against Nano Defendants**

227. Plaintiff ~~re-alleges~~, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

228. The Nano Defendants had a legal duty to exercise reasonable care with respect to the management of XRB, including but not limited to maintaining the XRB Protocol; listing XRB on a secure exchange; promoting the use of secure exchanges; properly vetting the exchanges on which XRB was bought, sold and traded; making accurate representations and statements to Plaintiff and the Class about the safety of the Class' XRB on the BitGrail Exchange; dissuading the buying, selling, and trading of XRB on BitGrail after multiple red flags and other issues arose; creating a functional, performing, and non-defective XRB token; and conducting a security audit of the XRB Protocol, among other legal duties or care.

229. Nano Defendants breached their legal duties of care relating to their management of XRB when they failed to, *inter alia*,

- a. ~~Implement idempotence into the XRB Protocol thereby permitting the theft of the Class' XRB by the use of Double Withdrawal Transactions;~~

- b. Disclose material information related to the XRB Protocol and the BitGrail Exchange's operation while discussing information, knowledge, and exercising authority on all things XRB-related at panels, conferences, and online social networks;
- c. Permit Defendant Firano to shut down the BitGrail Exchange online despite having actual knowledge, or recklessly disregarding, the ongoing theft of XRB from accountholders on the BitGrail Exchange from July 2017 through January 2018;
- d. Disclose to ~~Plaintiff~~ and the Class the fact that the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;
- e. Take reasonable measures to ensure that the exchanges upon which XRB was bought, sold, and traded employed, utilized, and followed adequate security measures and protocols;
- f. Promote secure exchanges that had adequate security measures and protocols for buying, selling, and trading XRB;
- g. Refrain from encouraging buying, selling, and trading XRB on exchanges that lacked adequate security;
- h. Know or confirm that the material representations and statements regarding BitGrail's safety and security were accurate;
- i. Make material representations and statements to ~~Plaintiff~~ and the Class about the lack of safety and security measures and protocols utilized by the exchanges on which XRB was bought, sold and traded;
- j. Dissuade the further buying, selling, and trading of XRB on BitGrail after multiple red flags and other issues arose; and
- k. Conduct a security audit of the XRB Protocol.

~~230.~~ The Nano Defendants' failure to properly exercise the foregoing legal duties of care to Plaintiff and the Class was the proximate cause of the damages suffered by Plaintiff and the Class.

~~231.~~ ~~Plaintiff's~~ and the Class's damages total more than ~~\$5 million.~~

COUNT VIII**Fraud****Against Nano Defendants**

~~232.~~ Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - ~~196~~ above, and further alleges:

~~233.~~ The Nano Defendants made multiple misstatements and misrepresentations to Plaintiff and the Class, and further, concealed or failed to disclose material information to Plaintiff and the Class that Nano Defendants knew not to be true or did not believe to be true, including, but not limited to:

- a. ~~That~~ BitGrail was a safe, legitimate, and responsible exchange that observed and followed sufficient safety and security measures, protocols and safeguards;
- b. ~~That~~ the Nano Protocol was secure and included adequate safeguards;
- c. ~~That~~ the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;
- d. ~~That~~ Defendant Firano informed the Nano Defendants of the Double Withdrawal Transactions as early as July 2017 and recommended that the BitGrail Exchange be taken offline;
- e. ~~That~~ the Class' funds were safe because the Nano Defendants were working closely with BitGrail to resolve these issues, and that there was no reason for any concern;
- f. ~~That~~ there was no need or reason to relocate or otherwise transfer XRB or any other store of value (e.g., fiat or other cryptocurrency) from BitGrail to other exchanges or wallets;
- g. ~~That~~ Nano Defendants' sale of XRB was for standard operating costs and not for profit; and
- h. ~~That~~ Nano Defendants had only paid themselves reasonable, small salaries and were not taking advantage of their positions to unilaterally pay themselves large and excessive salaries.

~~234.~~ The Nano Defendants made these misstatements and misrepresentations to Plaintiff and the Class, and concealed or failed to disclose material information to Plaintiff and the Class with the intent to defraud and/or induce Plaintiff and the Class to rely on these misstatements, misrepresentations, and concealment and nondisclosure of material information.

- a. Implement idempotence into the XRB Protocol thereby permitting the theft of the Class' XRB by the use of Double Withdrawal Transactions;
- b. Disclose material information related to the XRB Protocol and the BitGrail Exchange's operation while discussing information, knowledge, and exercising authority on all things XRB-related at panels, conferences, and online social networks;
- c. Permit Defendant Firano to shut down the BitGrail Exchange online despite having actual knowledge, or recklessly disregarding, the ongoing theft of XRB from accountholders on the BitGrail Exchange from July 2017 through January 2018;
- d. Disclose to Plaintiffs and the Class the fact that the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;
- e. Take reasonable measures to ensure that the exchanges upon which XRB was bought, sold, and traded employed, utilized, and followed adequate security measures and protocols;
- f. Promote secure exchanges that had adequate security measures and protocols for buying, selling, and trading XRB;
- g. Refrain from encouraging buying, selling, and trading XRB on exchanges that lacked adequate security;
- h. Know or confirm that the material representations and statements regarding BitGrail's safety and security were accurate;
- i. Make material representations and statements to Plaintiffs and the Class about the lack of safety and security measures and protocols utilized by the exchanges on which XRB was bought, sold and traded;
- j. Dissuade the further buying, selling, and trading of XRB on BitGrail after multiple red flags and other issues arose; and
- k. Conduct a security audit of the XRB Protocol.

191. The Nano Defendants' failure to properly exercise the foregoing legal duties of care to Plaintiff and the Class was the proximate cause of the damages suffered by Plaintiff and the Class.

192. Plaintiffs' and the Class's damages total more than Five Million Dollars (\$5,000,000.00).

COUNT II
Fraud
Against Nano Defendants

235. Plaintiff and the Class justifiably and detrimentally relied on the Nano Defendants' foregoing false statements and representations, including purchasing, acquiring, and holding their XRB on BitGrail.

236. Plaintiff and the Class suffered damages as a result of their reliance on the Nano Defendants' foregoing statements and representations, including losing all of their respective XRB on or about February 8, 2018.

237. Based on the foregoing, the Nano Defendants are liable to Plaintiff and the Class for damages in excess of \$5 million.

COUNT IX
Negligent Misrepresentation
Against Nano Defendants

238. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

239. Nano Defendants made multiple misstatements and misrepresentations to Plaintiff and the Class, and further, concealed or failed to disclose material information to Plaintiff and the Class including, but not limited to:

- a. That BitGrail was a safe, legitimate, and responsible exchange that observed and followed sufficient safety and security measures, protocols and safeguards;
- b. That the Nano Protocol was secure and included adequate safeguards;
- c. That the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;
- d. That Defendant Firano informed the Nano Defendants of the Double Withdrawal Transactions as early as July 2017 and recommended that the BitGrail Exchange be taken offline;
- e. That the Class' funds were safe because the Nano Defendants were working closely with BitGrail to resolve these issues, and that there was no reason for any concern;
- f. That there was no need or reason to relocate or otherwise transfer XRB or any other store of value (e.g., fiat or other cryptocurrency) from BitGrail to other exchanges or wallets;
- g. That Nano Defendants' sale of XRB was for standard operating costs and not for profit; and

1 193. Plaintiffs re-allege, and adopts by reference herein, Paragraphs 1 - 187 above, and
2 further allege:

3 194. The Nano Defendants made multiple misstatements and misrepresentations to Plaintiffs
4 and the Class, and further, concealed or failed to disclose material information to Plaintiffs and the
5 Class that Nano Defendants knew not to be true or did not believe to be true, including, but not limited
6 to the following:

- 7 a. BitGrail was a safe, legitimate, and responsible exchange that observed
8 and followed sufficient safety and security measures, protocols and
9 safeguards;
- 10 b. the Nano Protocol was secure and included adequate safeguards;
- 11 c. Plaintiffs' and the Class' XRB was being stolen through use of Double
12 Withdrawal Transactions from July 2017 through January 2018;
- 13 d. Defendant Firano informed the Nano Defendants of the Double
14 Withdrawal Transactions as early as July 2017 and recommended that
15 the BitGrail Exchange be taken offline;
- 16 e. Plaintiffs' and the Class' funds were safe because the Nano Defendants
17 were working closely with BitGrail to resolve these issues, and that
18 there was no reason for any concern;
- 19 f. there was no need or reason to relocate or otherwise transfer XRB or
20 any other store of value (e.g., fiat or other cryptocurrency) from BitGrail
21 to other exchanges or wallets;
- 22 g. the Nano Defendants' sale of XRB was for standard operating costs and
23 not for profit; and
- 24 h. the Nano Defendants had only paid themselves reasonable, small
25 salaries and were not taking advantage of their positions to unilaterally
26 pay themselves large and excessive salaries.

27 195. The Nano Defendants made these misstatements and misrepresentations to Plaintiffs
28 and the Class, and concealed or failed to disclose material information to Plaintiff and the Class with
the intent to defraud and/or induce Plaintiffs and the Class to rely on these misstatements,
misrepresentations, and concealment and nondisclosure of material information.

196. Plaintiffs and the Class justifiably and detrimentally relied on the Nano Defendants'
foregoing false statements and representations, including purchasing, acquiring, and holding their XRB
on BitGrail.

h. That Nano Defendants had only paid themselves reasonable, small salaries and were not taking advantage of their positions to unilaterally pay themselves large and excessive salaries.

240. The Nano Defendants made these misstatements and misrepresentations to Plaintiff and the Class without any reasonable ground for believing the statements to be true.

241. Furthermore, the Nano Defendants failed to disclose material information without reasonably believing that the material information should have been withheld or not disclosed to Plaintiff and the Class.

242. Plaintiff and the Class justifiably and detrimentally relied on the Nano Defendants' foregoing misstatements and misrepresentations, including purchasing, acquiring, and holding their XRB on BitGrail.

243. Plaintiff and the Class suffered damages as a result of their reliance on the Nano Defendants' foregoing misstatements and misrepresentations, including losing all of their respective XRB on or about February 8, 2018.

244. Based on the foregoing, the Nano Defendants are liable to Plaintiff and the Class for damages in excess of \$5 million.

COUNT X
Constructive Fraud
Against All Defendants

245. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:

246. The Nano Defendants had a fiduciary relationship with, and owed fiduciary duties or loyalty and care to, Plaintiff and the Class due to their relationship with Plaintiff and the Class, which included but was not limited to: The Nano Defendants' status as fiduciaries to the class is evidenced by their:

- a. Serving as the primary source of information, knowledge, and authority on all things XRB-related, such as at panels, conferences, online social networks (e.g., Twitter, Reddit, etc.);
- b. Maintaining exclusive control over the XRB Protocol;
- c. Commission of Firano to create the BitGrail Exchange as an XRB dedicated exchange;

198. Based on the foregoing, the Nano Defendants are liable to Plaintiffs and the Class for damages in excess of Five Million Dollars (\$5,000,000.00).

199. Plaintiffs re-allege, and adopts by reference herein, Paragraphs 1 - 187 above, and further allege:

200. Nano Defendants made multiple misstatements and misrepresentations to Plaintiff and the Class, and further, concealed or failed to disclose material information to Plaintiff and the Class including, but not limited to the following:

- 49

- d. Partnering with the BitGrail Defendants to create the BitGrail Exchange and involvement in maintaining the exchange's XRB-related operations;
- e. Exercising exclusive control over the decision to list XRB on BitGrail;
- f. Maintaining superior and unique knowledge of the inadequacy of the XRB Protocol's safeguards—specifically its lack of idempotence—and the BitGrail Exchange's lack of secondary measures to prevent the Double Withdrawal Transactions;
- g. Updating Nano Protocol to include idempotence on February 16, 2018 after the Class' XRB had already been stolen from exploitation of the Double Withdrawal Transactions;
- h. Promoting and encouraging Plaintiff and the Class to buy, sell, and trade XRB on BitGrail;
- i. Making repeated assurances to Plaintiff and the Class that BitGrail was a safe and secure exchange, downplaying and explaining away red flags, and maintaining constant contact and involvement in issues involving trading XRB on BitGrail;
- j. Having the exclusive ability and acknowledging the need to conduct a security audit of the XRB Protocol;
- k. Advising the public that the Nano Defendants were contemplating creating and administering trust fund for distribution of XRB;
- l. Creating a legal fund to help Plaintiff and Class recover their respective losses; and
- m. Acknowledging that the Nano Defendants were aware that listing on larger exchanges would lead to responsibility for larger damages.

247. The Nano Defendants engaged in various acts, omissions, and concealments involving the breach of those fiduciary duties owed to Plaintiff and the Class, including but not limited to, failing to:

- a. Failing to implement idempotence into the XRB Protocol thereby permitting the theft of the Class' XRB by the use of Double Withdrawal Transactions;
- b. Failing to disclose material information related to the XRB Protocol and the BitGrail Exchange's operation while discussing information, knowledge, and exercising authority on all things XRB-related at panels, conferences, and online social networks;
- c. Forcing Defendant Firano to keep the BitGrail Exchange online despite having actual knowledge, or recklessly disregarding, the ongoing theft of XRB from accountholders on the BitGrail Exchange from July 2017 through January 2018;

201. The Nano Defendants made these misstatements and misrepresentations to Plaintiffs and the Class without any reasonable ground for believing the statements to be true.

202. Furthermore, the Nano Defendants failed to disclose material information without reasonably believing that the material information should have been withheld or not disclosed to Plaintiffs and the Class.

203. Plaintiffs and the Class justifiably and detrimentally relied on the Nano Defendants' foregoing misstatements and misrepresentations, including purchasing, acquiring, and holding their XRB on BitGrail.

204. Plaintiffs and the Class suffered damages as a result of their reliance on the Nano Defendants' foregoing misstatements and misrepresentations, including losing all of their respective XRB on or about February 8, 2018.

205. Based on the foregoing, the Nano Defendants are liable to Plaintiffs and the Class for damages in excess of Five Million Dollars (\$5,000,000.00).

COUNT IV
Breach of Contract
Against BitGrail Defendants

206. Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 205 above, and further alleges:

207. The BitGrail Defendants had legally binding contracts with Plaintiffs and the Class.

208. The BitGrail Defendants breached their contracts with Plaintiffs and the Class by failing to safeguard their funds and disabling the ability for accountholders to withdraw their XRB assets from the exchange.

209. The BitGrail Defendants breaches are the proximate cause of the damages suffered by Plaintiffs and the Class.

210. Defendants are liable to Plaintiffs and the Class for damages resulting from Defendant BitGrail's breaches of contract in excess of \$5 million.

- d. ~~Concealing from Plaintiff and the Class the fact that the Class' XRB was being stolen through use of Double Withdrawal Transactions from July 2017 through January 2018;~~
- e. ~~Making repeated assurances to Plaintiff and the Class that BitGrail was a safe and secure exchange, downplaying and explaining away red flags, and claiming to maintain constant contact and involvement in issues involving trading XRB on BitGrail;~~
- f. ~~Failing to conduct a security audit of the XRB Protocol;~~
- g. ~~Creating legal fund to divert attention and blame away from the Nano Defendants; and~~
- h. ~~Failing to take responsibility for damages that arose in connection with listing XRB on BitGrail.~~

248. ~~Plaintiff and the Class justifiably and detrimentally relied on the Nano Defendants' foregoing acts, omissions, and concealments involving their breaches of the fiduciary duties of care and loyalty owed to Plaintiff and the Class.~~

249. ~~Plaintiff and the Class suffered damages as a result of their reliance on the Nano Defendants' foregoing acts, omissions, and concealments, including losing all of their respective XRB as disclosed on February 8, 2018.~~

250. ~~Based on the foregoing, the Nano Defendants are liable to Plaintiff and the Class for damages in excess of \$5 million.~~

COUNT XI
Quasi Contract Claim
Against Nano Defendants

251. ~~Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 196 above, and further alleges:~~

252. ~~Plaintiff and the Class conferred a benefit on the Nano Defendants through fraud, mistake, coercion, or request, including, but not limited to the Nano Defendants' actions, omissions, and failures to disclose material information, such as:~~

- a. ~~That XRB would revolutionize global payment systems, such usurping the Visa, MasterCard, and Amex credit and debit payment networks by offering instant and immediate payment and settlement of transactions;~~

- b. That BitGrail was a safe, legitimate, and responsible exchange that observed and followed sufficient safety and security measures, protocols and safeguards;
- c. That the Nano Defendants were aware of red flags and other safety issues that arose prior to February 8, 2018, and that the Nano Defendants were working closely with BitGrail to resolve these issues, and that there was no reason for any concern;
- d. That there was no need or reason to relocate or otherwise transfer XRB or any other store of value (e.g., fiat or other cryptocurrency) from BitGrail to other exchanges or wallets;
- e. Failing to disclose that BitGrail lacked sufficient safety and security measures, protocols, and safeguards;
- f. Representing to Plaintiff and the Class that BitGrail would safely store custody of Plaintiff's and the Class's respective XRB;
- g. Encouraging investing, trading, and holding of XRB on BitGrail as a sensible and reasonable investment strategy;
- h. Assuring that all XRB on BitGrail was safely stored;
- i. That the Nano Defendants' sale of XRB was for standard operating costs and not for profit; and
- j. That the Nano Defendants had only paid themselves reasonable, small salaries and were not taking advantage of their positions to unilaterally pay themselves large and excessive salaries.

253. The Nano Defendants were unjustly enriched by the Plaintiff's and Class' purchase and trading of XRB, because XRB's price appreciated as a result of Plaintiff's and the Class's purchase and trading of XRB, thereby enriching the Nano Defendants with large appreciation of value of their own XRB holdings, the ability of a large market to sell and dump their XRB at a large profit, and potentially obtain fees or payments for directing trading volume at exchanges like BitGrail.

254. It would be inequitable and against the fundamental principles of justice, equity, and good conscience for Defendants to retain the substantial monetary benefits they have received as a result of their misconduct.

255. Based on the foregoing, Plaintiff and the Class suffered damages in excess of \$5 million.

256. Defendants should disgorge all benefits conferred upon them as a result of their misconduct to make full restitution to Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, ~~Plaintiff~~ and the proposed Class pray for relief and judgment against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action and certifying ~~Plaintiff~~ as the Class representative and ~~his~~ counsel as Class counsel;

B. ~~Declaring that Defendants offered and sold unregistered securities in violation of the federal securities laws;~~

C. ~~Declaring Defendants are liable to Plaintiff and the Class under Sections 12(a)(1) and/or 15(a) of the Securities Act;~~

D. A judgment awarding ~~Plaintiff~~ and the Class equitable restitution, including, without limitation, rescission of their investments in all XRB held in accounts at BitGrail, restoration of the *status quo ante*, return to ~~Plaintiff~~ and the Class all cryptocurrency or fiat currency they paid as a result of Defendants' unlawful and unfair business practices and conduct;

E. An award of any and all additional damages recoverable under law -- jointly and severally entered against Defendants -- including but not limited to compensatory damages, punitive damages, incidental damages, and consequential damages;

F. An Order requiring an accounting of the remaining funds and assets raised from Plaintiff and the Class in connection with XRB;

G. An Order imposing a constructive trust over the funds and assets rightfully belonging to ~~Plaintiff~~ and the Class;

H. Awarding pre-judgment and post-judgment interest;

I. Awarding ~~Plaintiff~~ and the Class reasonable attorneys' fees, expenses, and the costs of this action; and

J. Granting other relief as this Court may deem just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the proposed Class pray for relief and judgment against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action and certifying Plaintiffs as the Class Representatives and their counsel as Class counsel;

B. A judgment awarding Plaintiffs and the Class equitable restitution, including, without limitation, rescission of their investments in all XRB held in accounts at BitGrail, restoration of the *status quo ante*, return to Plaintiffs and the Class all cryptocurrency or fiat currency they paid as a result of Defendants' unlawful and unfair business practices and conduct;

C. An award of any and all additional damages recoverable under law -- jointly and severally entered against Defendants -- including but not limited to compensatory damages, punitive damages, incidental damages, and consequential damages;

D. An Order requiring an accounting of the remaining funds and assets raised from Plaintiff and the Class in connection with XRB;

E. An Order imposing a constructive trust over the funds and assets rightfully belonging to Plaintiffs and the Class;

F. Awarding pre-judgment and post-judgment interest;

G. Awarding Plaintiffs and the Class reasonable attorneys' fees, expenses, and the costs of this action; and

H. Granting other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all claims so triable.

Dated: August 3, 2020

Respectfully submitted,

LEVI & KORSINSKY, LLP

By: /s/ Rosanne L. Mah

Rosanne L. Mah

LEVI & KORSINSKY, LLP

388 Market Street, Suite 1300
San Francisco, CA 94111

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all claims so triable.

LEVI & KORSINSKY, LLP

By: /s/ Rosanne L. Mah

Rosanne L. Mah

LEVI & KORSINSKY, LLP

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San Francisco, CA 94104

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SILVER MILLER

11780 W. Sample Road

Coral Springs, Florida 33065

Telephone: (954) 516-6000

Counsel for Plaintiff ~~JAMES FABIAN~~

~~CERTIFICATE OF SERVICE~~

~~I HEREBY CERTIFY~~ that a copy of the foregoing was electronically filed with the Clerk of Court on this 25th day of July 2019 by using the CM/ECF system and that a true and correct copy will be served via electronic mail to: ~~PETER SCOOLIDGE, ESQ., SCOOLIDGE LLP, Counsel for Defendants Hieusys LLC d/b/a Nano, Colin LeMahieu, Mica Busch, and Troy Retzer, 315 W. 36th Street, New York, NY 10018, E-mail: Peter@ScoolidgeLLP.com, SHAWN NAUNTON, ESQ. and VANESSA GARCIA, ESQ., ZUCKERMAN SPAEDER LLP, Counsel for Defendant Zack Shapiro, 485 Madison Avenue, New York, NY 10022, E-mail: SNaunton@zuckerman.com, VGarcia@zuckerman.com, and PAUL J. BYRNE, ESQ., CORNERSTONE LAW GROUP, Counsel for Defendants Hieusys LLC d/b/a Nano, Colin LeMahieu, Mica Busch, Troy Retzer, and Zack Shapiro, 351 California St, Ste 600, San Francisco, CA 94104, E-mail: PByrne@cornerlaw.com.~~

~~/s/ Rosanne L. Mah~~

ROSANNE L. MAH

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4 **LEVI & KORSINSKY, LLP**
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9 David C. Silver*
10 Jason S. Miller*
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12 11780 W. Sample Road
13 Coral Springs, FL 33065
14 Telephone: (954) 516-6000

15 *Counsel for Plaintiffs*

16 ** to be admitted pro hac vice*

EXHIBIT B

SCOOLIDGE PETERS RUSSOTTI & FOX LLP

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Attorneys for Defendants Hieusys, LLC, Colin

LeMahieu, Troy Retzer, Mica Busch, and Zack Shapiro

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES FABIAN, individually; and on behalf of
All Others Similarly Situated;

Plaintiff,

v.

NANO f/k/a RAIBLOCKS f/k/a HIEUSYS, LLC;
COLIN LEMAHIEU; MICA BUSCH; ZACK
SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. f/k/a BITGAIL S.R.L. f/k/a WEBCOIN
SOLUTIONS; AND FRANCESCO "THE
BOMBER" FIRANO,

Defendants.

Case No. 4:19-cv-54-YGR

**NOTICE OF DEPOSITION OF JAMES
FABIAN**

Date: August 7, 2020

Time: 10:00 am

Place: Cornerstone Law Group
351 California St Ste 600
San Francisco CA 94104

Complaint Filed: January 3, 2019

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 7, 2020 at 10:00 am, at 351 California St Ste 600,
3 San Francisco, CA 94104, Defendants Hiusys LLC, Colin LeMahieu, Mica Busch, Zack Shapiro, and
4 Troy Retzer, by and through their attorneys of record in this action, will take the deposition of
5 Plaintiff James Fabian pursuant to Rule 30 of the Federal Rules of Civil Procedure on matters
6 concerning the issue of class certification. The deposition will continue from day to day thereafter
7 until completed (Saturdays, Sundays and holidays excluded).

8 PLEASE TAKE FURTHER NOTICE that this deposition may be recorded by video
9 technology and through the instant visual display of testimony in addition to stenographic recording.

10 Date: May 29, 2020

11
12 /s/ Peter Fox

13 Peter Scoolidge

14 Peter Fox

**SCOOLIDGE PETERS RUSSOTTI & FOX
LLP**

*Attorneys for Defendants Hieusys, LLC,
Colin LeMahieu, Troy Retzer, and Mica Busch*

17 /s/ Shawn Naunton

18 Shawn Naunton

19 Devon Galloway

ZUCKERMAN SPAEDER LLP

Attorneys for Defendant Zack Shapiro

21 /s/ Paul J Byrne

22 Paul J. Byrne

CORNERSTONE LAW GROUP

*Attorneys for Defendants Hieusys, LLC, Colin
LeMahieu, Troy Retzer, Mica Busch, and Zack
Shapiro*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of New York. I am employed in the City and County of New York, State of New York; I am over the age of 18 years and not a party to the within action; my business address is 2 Park Avenue, 19th Floor, New York, NY 10016.

On May 29, 2020, I served

A NOTICE OF DEPOSITION OF JAMES FABIAN

within on the interested parties in this action by placing a copy thereof, enclosed in a sealed envelope, addressed as follows:

John A. Carriel
Zelle LLP
1775 Pennsylvania Ave, NW
Suite 375
Washington, DC 20006
Email: jcarriel@zelle.com

X (VIA MAIL) I caused the envelope, postage thereon fully prepaid, to be deposited with the United States Postage Service at Southfield, MA.

____(VIA PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand on this date
to the addressee(s).

____ (VIA FAX) I served said document(s) by transmitting via facsimile from facsimile number (415) 974-6433 to the facsimile number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

 X (VIA EMAIL) I served said document(s) by transmitting via electronic mail. The document(s) were scanned and attached as a .PDF document.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am admitted *pro had vice* to the bar of this Court.

Executed on May 29, 2020 at Southfield, MA

/s/ Peter Fox
PETER FOX

EXHIBIT C

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Attorneys for Defendants Hieusys, LLC, Colin

LeMahieu, Troy Retzer, Mica Busch, and Zack Shapiro

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES FABIAN, individually; and on behalf of
All Others Similarly Situated;

Plaintiff,

v.

NANO f/k/a RAIBLOCKS f/k/a HIEUSYS, LLC;
COLIN LEMAHIEU; MICA BUSCH; ZACK
SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. f/k/a BITGRAIL S.R.L. f/k/a WEBCOIN
SOLUTIONS; AND FRANCESCO "THE
BOMBER" FIRANO,

Defendants.

Case No. 4:19-cv-54-YGR

**FIRST SET OF INTERROGATORIES OF
HIEUSYS LLC, COLIN LEMAHIEU, MICA
BUSCH, ZACK SHAPIRO, AND TROY
RETZER TO PLAINTIFF**

Complaint Filed: January 3, 2019

REQUESTING PARTIES: HIEUSYS LLC, COLIN LEMAHIEU, MICA BUSCH,
ZACK SHAPIRO, and TROY RETZER

RESPONDING PARTING: JAMES FABIAN

SET NUMBER: One

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Hiusys LLC, Colin LeMahieu, Mica Busch, Zack Shapiro, and Troy Retzer propound the following interrogatories:

DEFINITIONS

Each word or term used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Northern District of California. Furthermore, these Interrogatories shall be interpreted by reference to the definitions set forth below.

1. “Action” means and refers to the action captioned James Fabian v. Colin LeMahieu et al., Civil Case No. 4:15-CV-00054-YRG, proceeding in the United States District Court for the Northern District of California (the “Court”).

2. “Complaint” shall mean the operative complaint in this action, i.e., the First Amended Class Action Complaint filed on July 25, 2019, as modified by the Court’s October 4, 2019 order dismissing eight of the 11 claims you asserted in the complaint.

3. “Challenged Statement” shall mean any statement, including any oral or written communication, phrase, or image that you challenge in this action as a misrepresentation. Challenged statements include all statements on which you base your fraud and negligent misrepresentation claims.¹

4. “Communication” includes, without limitation, any transmission or transfer of information of any kind, whether orally, electronically, in writing, or in any other manner, at any time or place, and under any circumstances whatsoever.

5. “Document” has the full meaning ascribed to those terms under Rule 34 of the Federal Rules of Civil Procedure.

¹ The Court rejected your fraud and negligent misrepresentation claims to the extent they were premised on a theory of concealment. *See* Order Granting in Part & Denying in Part Mot. to Dismiss (Dkt. No. 66), at 21 n.13. Thus, no potentially actionable misrepresentation may be based an alleged omission.

6. “Including” shall mean including, but not limited to.

7. Except as otherwise specified in a particular Interrogatory below, to “identify” means to provide the following information:

a. To “identify” a communication, shall mean to state: (i) the type of communication; (ii) the general subject matter; (iii) the date of the communication; and (iv) the author(s), addressee(s), and recipient(s) – or, if the communication was oral, the persons involved in the communication.

b. To “identify” a document shall mean to state: (i) the type of document, (ii) its creator(s), addressee(s), recipient(s), and custodian(s), (iii) its title(s) and subject matter, and (iv) the date of its creation, publication, and transmission to you. If a document already has been produced in this action, you may identify it using the Bates number given to it at the time of production.

c. To “identify” a person shall mean to state the person’s full name, location, and contact information (if reasonably available), and, when referring to a natural person, the place of employment and job title. Once a person has been identified in one of your answers to these Interrogatories, only the name of that person needs to be listed in response to subsequent Interrogatories requesting the identification of that person.

8. “Nano Defendants” shall refer to the defendants Hiusys LLC, Colin LeMahieu, Mica Busch, Zack Shaprio, and Troy Retzer.

9. “Person” means any natural individual, partnership, proprietorship, firm, association, joint venture, corporation, subsidiary or other governmental or legal business entity, as well as individuals, and their agents, representatives, and any other person acting on their behalf.

10. “Relating to” shall mean and include regarding, referring to, pertaining to, mentioning, discussing, describing, disclosing, concerning, confirming, constituting, supporting, evidencing, memorializing, containing, representing, or being connected with in any way, directly or indirectly, a stated subject matter. As indicated, the terms necessarily include information which is in opposition to, as well as in support of, your positions and claims in this action.

11. “You,” and “your” shall refer to you, James Fabian, the named plaintiff in the complaint.

INSTRUCTIONS

1
2 1. In answering the Interrogatories below, you are required to disclose all information
3 within your possession, custody, or control, regardless of location.

4 2. These Interrogatories should be construed in the broadest possible manner consistent
5 with the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District
6 Court for the Northern District of California.

7 3. The words “all,” “any,” “each,” “every,” “and,” and “or” shall be construed
8 conjunctively or disjunctively as necessary to make the Interrogatories inclusive rather than
9 exclusive. Unless specifically provided otherwise in these Interrogatories, words imparting the
10 singular shall include the plural and vice versa, where appropriate.

11 4. As used herein, the masculine gender of any word includes the feminine and the
12 neuter, and the feminine of any word includes the masculine and the neuter.

13 5. The past tense of any verb used herein includes the present tenses, and the present
14 tense includes the past tense.

15 6. No part of any Interrogatory should be ignored merely because an objection is
16 interposed to another part of the Interrogatory. If a partial or incomplete production is provided, state
17 that the production is partial or incomplete and explain why.

18 7. If asserting an objection to an Interrogatory based on privilege or work product
19 protection, provide information that will enable an assessment of the applicability of the privilege or
20 protection.

21 8. If you conclude that any Interrogatory, definition, or instruction is ambiguous, then
22 state in your answer the matter deemed ambiguous and the construction you employed in answering
23 the Interrogatory.

24 9. Where an Interrogatory contains subparts, respond to each subpart separately.

25 10 These Interrogatories are continuing in nature. If, after answering any Interrogatories,
26 you obtain or become aware of new or additional responsive information, you are required to provide
27 such information or documents by way of a supplemental answer.
28

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each challenged statement, if any, made by:

- a.) Colin LeMahieu,
- b.) Mica Busch,
- c.) Zack Shaprio,
- d.) Troy Retzer, and
- e.) Hieusys LLC

In this Interrogatory, “identify” means to quote or describe in detail the challenged statement, to state the medium or media through which the statement was made (e.g., email, Twitter post, telephone conversation), and to state where, when, by whom, and to whom the challenged statement was made.

INTERROGATORY NO. 2:

For any challenged statement that you contend was “made” by a person who did not write or speak such statement, describe in detail your basis for such attributing the statement to that person.

INTERROGATORY NO. 3:

For any challenged statement that you contend was not made to you, describe in detail the date on which, and the circumstances in which, you received it.

INTERROGATORY NO. 4:

Describe in detail each specific act or omission, if any, that you contend was negligent committed by:

- a.) Colin LeMahieu,
- b.) Mica Busch,
- c.) Zack Shaprio,
- d.) Troy Retzer, and
- e.) Hieusys LLC

Such description must include the date that the act or omission occurred, the circumstances in which it occurred, and when you became aware of its occurrence. If the negligence involved an alleged omission, specify exactly what action you contend should have been, but was not, taken. Your

description must also include the reasons why you contend such act or omission was negligent, including by describing in detail the facts that you contend created a duty toward you, and the facts you contend demonstrate how, if at all, the act or omission caused you damages.

INTERROGATORY NO. 5:

Identify each specific negligent act or omission that you contend gives rise to vicarious liability – i.e., liability for the act or omission of another person. In this Interrogatory, “identify” means to describe in detail the act or omission that you contend was negligent, to identify the person whom you contend is vicariously liable for the commission of the act or omission, and to describe in detail the facts that you contend make such person vicariously liable for the act or omission.

INTERROGATORY NO. 6:

Describe in detail all facts relating to any relationship you contend exists between any of the Nano Defendants and Francesco Firano or any other person affiliated with the cryptocurrency exchange known as BitGrail, including all facts relating to your contention that any of the Nano Defendants “controlled” or were “involved” with BitGrail (*see* complaint ¶¶ 4, 18, 108, 172, 220, 221 and 246).

INTERROGATORY NO. 7:

Describe in detail all monetary relief that you seek in this action, on your own behalf or on behalf of anyone else, including any “compensatory damages, punitive damages, incidental damages, and consequential damages” (*see* complaint, at 62), including any calculations, estimates, formulas, spreadsheets, other documents, or other methods you contend should be used to determine such relief.

INTERROGATORY NO. 8:

Describe in detail all non-monetary relief that you seek in this action, on your own behalf or on behalf of anyone else, including any “accounting” of funds or the imposition of a “constructive trust” (*see* complaint, at 62), including the facts you contend would justify such relief.

INTERROGATORY NO. 9:

Identify any communications with or by you, or on your behalf, relating to any challenged statement identified in response to Interrogatory No. 1, any act or omission described in your

response to Interrogatory No. 4, or any other matters relevant to your claims and allegations in this action.

INTERROGATORY NO. 10:

Identify each person with knowledge relating to your claims and allegations in the complaint and state the subject of that knowledge.

INTERROGATORY NO. 11:

Identify all litigation matters in which you have been a party. For purposes of this Interrogatory, “identify” means to provide the case name, case number, court in which the litigation took place, and a description of the subject of the litigation.

INTERROGATORY NO. 12:

Describe in detail all facts relating to your contention that a “class action is the proper form” to bring this action (complaint ¶ 40).

INTERROGATORY NO. 13:

Identify all documents, whether or not within your possession, custody, or control, relating to the size and membership of the putative class alleged in paragraph 41 of the complaint. For any such document not within your possession, custody, or control, describe in detail the facts that cause you believe such document exists.

Date: May 29, 2020

/s/ Peter Fox
 Peter Scoolidge
 Peter Fox
**SCOOLIDGE PETERS RUSSOTTI & FOX
 LLP**
*Attorneys for Defendants Hieusys, LLC,
 Colin LeMahieu, Troy Retzer, and Mica Busch*

/s/ Shawn Naunton
 Shawn Naunton
 Devon Galloway
ZUCKERMAN SPAEDER LLP
Attorneys for Defendant Zack Shapiro

/s/ Paul J Byrne

Paul J. Byrne

CORNERSTONE LAW GROUP

*Attorneys for Defendants Hieusys, LLC, Colin
LeMahieu, Troy Retzer, Mica Busch, and Zack
Shapiro*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of New York. I am employed in the City and County of New York, State of New York; I am over the age of 18 years and not a party to the within action; my business address is 2 Park Avenue, 19th Floor, New York, NY 10016.

On May 29, 2020, I served

THE FIRST SET OF INTERROGATORIES OF HIEUSYS LLC, COLIN LEMAHIEU, MICA BUSCH, ZACK SHAPIRO, AND TROY RETZER TO PLAINTIFF

within on the interested parties in this action by placing a copy thereof, enclosed in a sealed envelope, addressed as follows:

John A. Carriel
Zelle LLP
1775 Pennsylvania Ave, NW
Suite 375
Washington, DC 20006
Email: jcarriel@zelle.com

X (VIA MAIL) I caused the envelope, postage thereon fully prepaid, to be deposited with the United States Postage Service at Southfield, MA.

____(VIA PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand on this date
to the addressee(s).

____ (VIA FAX) I served said document(s) by transmitting via facsimile from facsimile number (415) 974-6433 to the facsimile number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

X (VIA EMAIL) I served said document(s) by transmitting via electronic mail. The document(s) were scanned and attached as a .PDF document.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am admitted *pro hac vice* to the bar of this Court.

Executed on May 29, 2020 at Southfield, MA

/s/ Peter Fox
PETER FOX

EXHIBIT D

SCOOLIDGE PETERS RUSSOTTI & FOX LLP

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peter@sprflp.com

Peter Fox (NY4832606)

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(415) 655-8238 fax

Attorneys for Defendants Hieusys, LLC, Colin

LeMahieu, Troy Retzer, Mica Busch, and Zack Shapiro

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES FABIAN, individually; and on behalf of
All Others Similarly Situated;

Plaintiff,

v.

NANO f/k/a RAIBLOCKS f/k/a HIEUSYS, LLC;
COLIN LEMAHIEU; MICA BUSCH; ZACK
SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. f/k/a BITGRAIL S.R.L. f/k/a WEBCOIN
SOLUTIONS; AND FRANCESCO "THE
BOMBER" FIRANO,

Defendants.

Case No. 4:19-cv-54-YGR

**FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS OF
HIEUSYS LLC, COLIN LEMAHIEU, MICA
BUSCH, ZACK SHAPIRO, AND TROY
RETZER TO PLAINTIFF**

Complaint Filed: January 3, 2019

1 REQUESTING PARTIES: HIEUSYS LLC, COLIN LEMAHIEU, MICA BUSCH,
2 ZACK SHAPIRO, and TROY RETZER

3 RESPONDING PARTING: JAMES FABIAN

4 SET NUMBER: One

5 DATE AND TIME: 11:00 A.M. on the day that responses are due to these
6 requests per the Federal Rules of Civil Procedure

7 PLACE: Cornerstone Law Group, 351 California Street, Suite
8 600, San Francisco, CA 94104

9 Hieusys LLC, Colin LeMahieu, Mica Busch, Zack Shapiro, and Troy Retzer (collectively, the
10 “Nano Defendants”) demand, under Rule 34 of the Federal Rules of Civil Procedure, that James
11 Fabian produce the documents described below, for inspection and/or copying, at the date, time and
12 place listed above. In lieu of producing the documents requested below at the above time and place,
13 the Nano Defendants will accept copies of the documents delivered to pfox@sprfllp.com,
14 peter@sprfllp.com, pbyrne@cornerlaw.com, and snaunton@zuckerman.com provided that there is
15 included with such delivery a properly executed verification that the copies of the documents
16 requested.

17 **DEFINITIONS**

18 Each word or term used in these Requests for Production of Documents (“RFPs”) is intended
19 to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Local
20 Civil Rules of the United States District Court for the Northern District of California. Furthermore,
21 these RFPs shall be interpreted by reference to the definitions set forth below.

22 1. “Action” means and refers to the action captioned James Fabian v. Colin LeMahieu et
23 al., Civil Case No. 4:15-CV-00054-YRG, proceeding in the United States District Court for the
24 Northern District of California (the “Court”).

25 2. “Complaint” shall mean the operative complaint in this action, i.e., the First Amended
26 Class Action Complaint filed on July 25, 2019, as modified by the Court’s October 4, 2019 order
27 dismissing eight of the 11 claims you asserted in the complaint.

28 3. “Challenged Statement” shall mean any statement, including any oral or written
communication, phrase, or image that you challenge in this action as a misrepresentation. Challenged

statements include all statements on which you base your fraud and negligent misrepresentation claims.¹

4. “Communication” includes, without limitation, any transmission or transfer of information of any kind, whether orally, electronically, in writing, or in any other manner, at any time or place, and under any circumstances whatsoever.

5. “Document” has the full meaning ascribed to those terms under Rule 34 of the Federal Rules of Civil Procedure.

6. “Including” shall mean including, but not limited to.

7. “Person” means any natural individual, partnership, proprietorship, firm, association, joint venture, corporation, subsidiary or other governmental or legal business entity, as well as individuals, and their agents, representatives, and any other person acting on their behalf.

8. “Relating to” shall mean and include regarding, referring to, pertaining to, mentioning, discussing, describing, disclosing, concerning, confirming, constituting, supporting, evidencing, memorializing, containing, representing, or being connected with in any way, directly or indirectly, a stated subject matter. As indicated, the terms necessarily include information which is in opposition to, as well as in support of, your positions and claims in this action.

9. “You,” and “your” shall refer to you, James Fabian, the named plaintiff in the complaint.

INSTRUCTIONS

1. These RFPs call for the production of all documents within your possession, custody, or control, regardless of location.

2. All requested documents must be produced in their entirety, with all attachments and enclosures.

¹ The Court rejected your fraud and negligent misrepresentation claims to the extent they were premised on a theory of concealment. *See* Order Granting in Part & Denying in Part Mot. to Dismiss (Dkt. No. 66), at 21 n.13. Thus, no potentially actionable misrepresentation may be based an alleged omission.

1 3. These RFPs should be construed in the broadest possible manner consistent with the
2 Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the
3 Northern District of California.

4 4. The words “all,” “any,” “each,” “every,” “and,” and “or” shall be construed
5 conjunctively or disjunctively as necessary to make the Interrogatories inclusive rather than
6 exclusive. Unless specifically provided otherwise in these RFPs, words imparting the singular shall
7 include the plural and vice versa, where appropriate.

8 5. As used herein, the masculine gender of any word includes the feminine and the
9 neuter, and the feminine of any word includes the masculine and the neuter.

10 6. The past tense of any verb used herein includes the present tenses, and the present
11 tense includes the past tense.

12 7. If asserting an objection to a request based on privilege or work product protection,
13 describe the nature of the privilege in a privilege log. The privilege log shall comply with Rule
14 26(b)(5) of the Federal Rule of Civil Procedure, and shall include the following:

- 15 a. the type of document or electronically stored information;
- 16 b. the general subject matter of the document or electronically stored information;
- 17 c. the date of the document or electronically stored information;
- 18 d. the author of the document or electronically stored information;
- 19 e. each person(s) to whom the document or electronically stored information was
20 addressed or copied; and
- 21 f. the nature and basis of your claim of privilege or other reason that the information is
22 protected from discovery in sufficient detail to determine the validity of that claim in accordance with
23 Rule 26(b)(5).

24 With respect to email chains, the privilege log shall include a single entry for an entire email
25 chain to the extent practical and technologically feasible. That privilege log entry will be populated
26 as follows: (a) with the “author” and “addressee” fields populated by the person listed in the “from”
27 and “to” lines, respectively, in the first-in-time email in the chain for which the privilege or
28 protection is claimed and (b) with a “recipient” field listing any additional persons who are identified

1 as recipients in the email chain (including any individuals copied on the original email for which
2 privilege or protection is claimed and any persons whose names appear in subsequent emails in the
3 chain). Email attachments shall receive their own log entries, separate from their cover emails.

4 8. Produce all documents by request, and request subpart as applicable. This means all
5 documents responsive to Request No. 1 should be produced together, and labeled as such; all
6 documents responsive to Request No. 2; and so forth.

7 9. No part of any request should be ignored merely because an objection is interposed to
8 another part of it. If a partial or incomplete production is provided, state that the production is partial
9 or incomplete and explain why.

10 10. If you conclude that any request, definition, or instruction is ambiguous, then state in
11 your answer the matter deemed ambiguous and the construction you employed in responding to the
12 request.

13 11. Where a request contains subparts, respond to each subpart separately.

14 12 These Requests are continuing in nature and you are required to supplement your
15 production of documents in accordance with Rule 26(e) of the Federal Rule of Civil Procedure with
16 respect to each request. Supplemental productions are required to be made within a reasonable time
17 after discovery of such documents

18 **DOCUMENT REQUESTS**

19 **REQUEST NO. 1:**

20 All documents relating to each challenged statement, if any, made by:

21 a.) Colin LeMahieu,

22 b.) Mica Busch,

23 c.) Zack Shaprio,

24 d.) Troy Retzer, and

25 e.) Hieusys LLC

26 For the avoidance of doubt, your response must be by request subpart (*see* Instruction No. 8), *and* by
27 each separate challenged statement.
28

1 **REQUEST NO. 2:**

2 All documents relating to each specific act or omission, if any, that you contend was negligent
3 committed by:

- 4 a.) Colin LeMahieu,
5 b.) Mica Busch,
6 c.) Zack Shaprio,
7 d.) Troy Retzer, and
8 e.) Hieusys LLC

9 For the avoidance of doubt, your response must be by request subpart (*see* Instruction No. 8), *and* by
10 each separate act or omission.

11 **REQUEST NO. 3:**

12 All documents relating to the allegations set forth in paragraphs 183 through 196 of the
13 complaint, including any account balance statements, order histories, deposit histories, withdrawal
14 histories, trade histories, and emails associated with the foregoing.

15 **REQUEST NO. 4:**

16 All documents relating to the allegations set forth in paragraphs 4, 18, 108, 172, 220, 221 and
17 246 of the complaint insofar as these allegations relate to any contention that any of the Nano
18 Defendants “controlled” or were “involved” with the cryptocurrency exchange known as BitGrail.

19 **REQUEST NO. 5:**

20 All documents relating to communications between you and:

- 21 a.) Francesco Firano, and
22 b.) Any other person affiliated with the cryptocurrency exchange known as BitGrail.

23 **REQUEST NO. 6:**

24 All documents relating to communications between you and any of the Nano Defendants.

25 **REQUEST NO. 7:**

26 All documents relating to your contention that a “class action is the proper form” to bring this
27 action (complaint ¶ 40).

28 **REQUEST NO. 8:**

1 All documents relating to the size and membership of the putative class alleged in paragraph
2 41 of the complaint.

3 **REQUEST NO. 9:**

4 All documents relating to any monetary relief that you seek in this action, on your own behalf
5 or on behalf of anyone else, including any “compensatory damages, punitive damages, incidental
6 damages, and consequential damages” (*see* complaint, at 62), including all documents relating to
7 calculations, estimates, formulas, or other methods you use to determine such relief.

8 **REQUEST NO. 10:**

9 All documents relating to any non-monetary relief that you seek in this action, on your own
10 behalf or on behalf of anyone else, including any “accounting” of funds or the imposition of a
11 “constructive trust” (*see* complaint, at 62), including all documents relating any facts you contend
12 support such relief.

13 **REQUEST NO. 11:**

14 All documents referred to in your responses to the Nano Defendants’ interrogatories

15 **REQUEST NO. 12:**

16 All documents relied on or referred to in the complaint.

17 **REQUEST NO. 13:**

18 To the extent not covered by other requests, all documents that you contend support your
19 claims in the complaint

20 Date: May 29, 2020

21
22 /s/ Peter Fox

23 Peter Schoolidge

24 Peter Fox

25 **SCOOLIDGE PETERS RUSSOTTI & FOX**
26 **LLP**

27 *Attorneys for Defendants Hieusys, LLC,*
28 *Colin LeMahieu, Troy Retzer, and Mica Busch*

/s/ Shawn Naunton

Shawn Naunton

Devon Galloway
ZUCKERMAN SPAEDER LLP
Attorneys for Defendant Zack Shapiro

/s/ Paul J Byrne

Paul J. Byrne
CORNERSTONE LAW GROUP
*Attorneys for Defendants Hieusys, LLC, Colin
LeMahieu, Troy Retzer, Mica Busch, and Zack
Shapiro*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of New York. I am employed in the City and County of New York, State of New York; I am over the age of 18 years and not a party to the within action; my business address is 2 Park Avenue, 19th Floor, New York, NY 10016.

On May 29, 2020, I served

THE FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS OF HIEUSYS LLC, COLIN LEMAHIEU, MICA BUSCH, ZACK SHAPIRO, AND TROY RETZER TO PLAINTIFF

within on the interested parties in this action by placing a copy thereof, enclosed in a sealed envelope, addressed as follows:

John A. Carriel
Zelle LLP
1775 Pennsylvania Ave, NW
Suite 375
Washington, DC 20006
Email: jcarriel@zelle.com

X (VIA MAIL) I caused the envelope, postage thereon fully prepaid, to be deposited with the United States Postage Service at Southfield, MA.

____(VIA PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand on this date to the addressee(s).

____ (VIA FAX) I served said document(s) by transmitting via facsimile from facsimile number (415) 974-6433 to the facsimile number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

X (VIA EMAIL) I served said document(s) by transmitting via electronic mail. The document(s) were scanned and attached as a .PDF document.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am admitted *pro hac vice* to the bar of this Court.

Executed on May 29, 2020 at Southfield, MA

/s/ Peter Fox
PETER FOX

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

-----x

JAMES FABIAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Case No.

4:19-cv-00054-YGR

NANO F/K/A RAIBLOCKS F/K/A HIEUSYS,
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACH SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. F/K/A BITGRAIL S.R.L. F/K/A
WEBCOIN SOLUTIONS; AND FRANCESCO
"THE BOMBER" FIRANO,
Defendants.

-----x

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
JAMES FABIAN

Friday, August 7, 2020

Reported By: Lynne Ledanois, CSR 6811

Job No. 4205619

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

-----x

JAMES FABIAN, individually and on
behalf of all othes similarly situated,

Plaintiff,

vs.

Case No.

4:19-cv-00054-YGR

NANO F/K/A RAIBLOCKS F/K/A HIEUSYS,
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACH SHAPIRO; TROY RETZER; BG SERVICES,
S.R.L. F/K/A BITGRAIL S.R.L. F/K/A
WEBCOIN SOLUTIONS; AND FRANCESCO
"THE BOMBER" FIRANO,
Defendants.

-----x

Videotaped remote deposition of JAMES
FABIAN, taken in Discovery Bay, commencing at
10:11 a.m., PST, on Friday, August 7, 2020
before Lynne Ledanois, Certified Shorthand
Reporter No. 6811

REMOTE APPEARANCES

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- and -

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snaunton@zuckerman.com

ALSO PRESENT:

Soseh Kevorkian, Videographer

Page 6

I N D E X O F E X A M I N A T I O N

Examination by:

Page

Mr. Fox

11

Mr. Enright

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///

I N D E X O F E X H I B I T S

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1	Exhibit 1	First Amended Class Action	
2		Complaint;	45
3	Exhibit 2	Second Supplemental Responses	
4		and Objections to Defendant's	
5		First Set of Interrogatories;	55
6	Exhibit 3	First Set of Interrogatories	
7		of Hieusys LLC, et al.,	59
8	Exhibit 4	Twitter thread, Fabian	
9		Tweets;	89
10	Exhibit 5	Reporter's Transcript of	
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13	Exhibit 6	Coinbase Confirmation of	
14		Credit Card Purchase of	
15		\$7,104 of BTC, 8/16/17;	
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18		Send for \$6,720 worth of	
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I N D E X O F E X H I B I T S

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Exhibit 11	BitGrail User Account Balances, (User and Date Unknown),	151
Exhibit 12	Bittrex Transfer History, February - April 2018, L&K_00885;	163

1 Friday, August 7, 2020

2 10:11 a.m. PST

3
4 VIDEOGRAPHER: Good morning. We are
5 going on the record at 10:11 a.m. on
6 August 7th, 2020.

7 This is Media Unit 1 of the
8 video-recorded deposition of James Fabian
9 taken by counsel in the matter of James
10 Fabian et al., versus Nano F/K/A RaiBlocks
11 F/K/A Hieusys, LLC, et al., filed in the
12 United States District Court. Case number
13 4:19-cv-00054-YGR.

14 This deposition is being held by Zoom.
15 My name is Soseh Kevorkian from the firm
16 Veritext. I'm the videographer located in
17 Topanga, California. Our court reporter is
18 Lynne Ledanois, also from the firm Veritext.

19 At this time would counsel and all
20 present please identify themselves for the
21 record.

22 MR. FOX: Sure. Why don't I start?

23 My name is Peter Fox. I am a partner
24 at the law firm of Scoolidge Peters
25 Russotti & Fox, LLP. We represent the

1 defendants in this actions, Hieusys LLC,
2 Colin LeMahieu, Mica Busch and Troy Retzer.

3 MR. SCOOLIDGE: Peter Scoolidge on
4 behalf of the same law firm, same defendants
5 as Mr. Fox.

6 MR. NAUNTON: Shawn Naunton and Devon
7 Galloway, Zuckerman Spaeder, LLP for
8 defendant Zachary Shapiro.

9 MR. ENRIGHT: Is that it for
10 defendants' counsel?

11 MR. FOX: It is.

12 MR. ENRIGHT: Donald J. Enright with
13 Levi & Korinsky for plaintiff James Fabian.

14 MR. NESS: Zachary Ness also from
15 Levi & Korinsky for plaintiff James Fabian.

16 MR SILVER: David Silver, Silver
17 Miller, plaintiff James Fabian.

18 MR. CARRIEL: John Carriel with Zelle
19 LLP for plaintiff James Fabian.

20 THE REPORTER: Is that everybody?

21 MR. FOX: All right. I have 1:14 p.m.
22 Eastern Standard Time. We are on the
23 record. So why don't we get going.

24 JAMES FABIAN,
25 having been duly sworn, testified as follows:

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EXAMINATION

BY MR. FOX:

Q I want to talk about a couple of basic ground rules specific to this no longer unique but traditionally unusual format that we're conducting the deposition, which is remotely.

As we talked about -- and, Mr. Fabian, I should add I'm going to go over some specific rules with you in a moment. But for everyone who is participating, as we talked about off the record, while you're participating you need to be on camera at all times.

You should also be on mute at all times unless you are the witness, Mr. Fabian, Mr. Enright, who I understand will be defending Mr. Fabian, or myself or anyone else who takes a turn examining the witness.

MR. FOX: Related to the camera point, I do want to point out, Mr. Enright, because of the -- it looks like it must be a very nice day in the D.C. area. Because of the sunlight pouring in the window behind you, we can't really see you. We just sort of see a silhouette.

Is there any way you might be able to

1 turn on a light in your office or draw some
2 shades or --

3 MR. ENRIGHT: Let me see what I can
4 do.

5 MR. FOX: Thank you very much. We'll
6 pause while you address that.

7 MR. ENRIGHT: Is that better?

8 MR. FOX: It's not perfect, but it's
9 better. We see you.

10 Q So, Mr. Fabian, have you ever sat for
11 a deposition before?

12 A I have not.

13 Q You were just sworn in. You're
14 required to answer all of the questions that I
15 ask you under oath. That's what that meant.

16 And that means that you will be
17 required to tell the truth in the same way that
18 you would be required to tell the truth if you
19 were in front of a judge.

20 And if you fail to tell the truth, the
21 consequences of that could be quite serious,
22 including and up to criminal perjury.

23 Do you understand that?

24 A I do, yes.

25 Q If I ask you a question and you don't

1 understand the question, I would like you to let
2 me know right away and I will do my best to
3 clarify the question or rephrase it in a way
4 that you do understand.

5 If you don't let me know, I'm going to
6 assume that you understand the question.

7 Do you understand?

8 A I do.

9 Q Okay. If you want to take a break,
10 you're welcome to do so. As I mentioned off the
11 record, this deposition is potentially several
12 hours long. I would just ask that you let me
13 finish whatever line of questioning we may be on
14 within reason. And, you know, obviously you
15 can't take a break while there is a pending
16 question. So you can answer any pending
17 question before we take a break.

18 Does that make sense to you?

19 A It does, yes.

20 Q As you can see, we have a court
21 reporter here with us online today. She's
22 recording everything that is said at this
23 deposition. Thus, it is important that only one
24 of us is speaking at a time and if you wait
25 until I'm done asking a question before you

1 start to answer.

2 It's also important that you speak
3 clearly and answer each question verbally
4 because the court reporter cannot record nods of
5 the head or other forms of non-verbal
6 communication.

7 Do you understand that?

8 A I do.

9 Q Okay. For the same reason, during the
10 deposition, all communication between you and
11 anyone else must be spoken so that it can be
12 transcribed for the record. This means that you
13 cannot text your lawyers or IM with them or
14 engage in any other communication with them
15 while we're live except for by speaking clearly
16 and on the record.

17 Do you understand that?

18 A I do.

19 Q Okay. I want to add that while we're
20 on break, you can, of course, communicate with
21 your attorneys by whatever means is most
22 convenient for you.

23 You may hear Mr. Enright or another
24 one of the plaintiffs' counsel who may be
25 defending make an objection. That statement is

1 to preserve his objection for the record so that
2 a judge can decide its merit later if necessary.
3 You still must answer the question.

4 Do you understand that?

5 A I do.

6 Q All right. Now I want to talk about
7 some special ground rules that apply today
8 because this is a remote deposition rather than
9 a live deposition the way we traditionally
10 conduct these proceedings.

11 So I'm going to ask that you position
12 the computer -- strike that.

13 Are you using a laptop or a desktop
14 today, Mr. Fabian?

15 A It's a laptop.

16 Q It's a laptop. I'm going to ask that
17 you position the laptop so that we can see your
18 body from the tabletop to your head.

19 You're pretty good right now. Would
20 you mind pushing it just a little bit further
21 away so we can have a bit more context, assuming
22 that there's room?

23 A That.

24 Q Could we do just a little bit more?

25 A How's that?

1 THE REPORTER: Wait a second. We have
2 to -- Peter? Peter? Peter? Excuse, me, I
3 just want to make sure I can hear the
4 witness from that distance and --

5 MR. FOX: Oh, yeah, why don't we --
6 I'll ask the question again and if you can
7 give a sentence response so, Mr. Fabian, the
8 court reporter will be able to test the
9 microphone.

10 Q So is that a comfortable arrangement
11 for you, Mr. Fabian?

12 A It is, yes, it's comfortable.

13 MR. FOX: Madam court reporter, did
14 that come out okay?

15 THE REPORTER: Yes.

16 BY MR. FOX:

17 Q Second, unless I've instructed you to
18 look at a document on your computer screen,
19 which I will be sharing with you, you should try
20 to keep your eyes focused on the camera on your
21 laptop at all times and this is so that we can
22 be sure that you're not receiving any
23 communications off the record.

24 Do you understand?

25 A I do.

1 Q Okay. We already talked about this
2 for everybody but it's, of course, true for you
3 as well.

4 At no point while we're on the record
5 can you turn off your camera, move your
6 microphone, you need to be live at all times
7 while the deposition is ongoing.

8 Do you understand?

9 A I do.

10 MR. ENRIGHT: While we're on the
11 record you mean?

12 MR. FOX: While we're on the record,
13 exactly.

14 BY MR. FOX:

15 Q Fourth, related to my instruction
16 regarding transcription, no one who is attending
17 this deposition, and that means not any of your
18 lawyers, not me, not any of my colleagues, can
19 communicate with you while the deposition is
20 ongoing except vocally and on the record.

21 And to Mr. Enright's point, by
22 "ongoing" I mean while we're on the record.

23 If anyone does try to communicate with
24 you while we're live, whether it be by text
25 message or some sort of chat function, I need

1 you to tell me that immediately.

2 Do you understand that?

3 A I do.

4 Q Is there anyone else in the house this
5 morning with you?

6 A There is.

7 Q Do you have any expectation that that
8 person is going to come into the room while
9 you're taking the deposition?

10 A I've got my wife here. I told her not
11 to. I do have two little kids, but I've got the
12 door locked, so we should be good.

13 Q Great. And are you expecting anyone
14 else to come over?

15 A I'm not.

16 Q Okay. I would ask that if possible,
17 nobody come into the room while you're taking
18 the deposition. Again, when we're taking a
19 break, you're, of course, free to have people in
20 or go out and talk to them.

21 But if someone does come in, they will
22 need to be on the camera as well while they are
23 in the room.

24 Do you understand?

25 A Yes, no problem.

1 Q Okay. Many of these instructions are
2 variations on a theme that you cannot use any
3 communication device other than the deposition
4 application running on your computer that you're
5 using now while we're on the record. That means
6 you cannot look at or use your phone while the
7 deposition is ongoing.

8 Do you understand?

9 A I do.

10 Q Do you have your phone reachable to
11 you right now?

12 A It is, yes.

13 Q I'm going to ask that you take your
14 cell phone out and put it behind the laptop
15 while we're on the record. Is that all right?

16 A Yes.

17 Q Do you have any applications running
18 on your computer other than the Zoom deposition
19 page right now?

20 A I do not.

21 Q Okay. I'm going to ask that you not
22 open any while we're live and on the record.
23 Okay?

24 A Yes.

25 Q So I'm sure your counsel reviewed with

1 you your responsibility to provide a quiet,
2 private environment that's serviced by reliable
3 high-speed internet connection.

4 I will say for the record that it
5 appears that the room you are in is, indeed,
6 quiet, private and we're getting internet, but I
7 want to confirm that with you.

8 Is the room that you're in right now
9 quiet?

10 A It is, yes.

11 Q Is it private?

12 A It is, yes.

13 Q And is it serviced by a reliable
14 high-speed internet connection?

15 A It is.

16 Q If the answer to any of these
17 questions changes, I want you to inform us
18 immediately. Okay?

19 A Okay.

20 Q And then finally, the court reporting
21 service that's hosting this remote deposition,
22 Veritext, has service technicians standing by.
23 If you have any technical problems, you need to
24 let us know right away so the technicians can
25 fix them.

1 Do you understand?

2 A I do.

3 Q Okay. Great.

4 So, Mr. Fabian, I'm going to be asking
5 you some questions today that may touch on your
6 interactions with your lawyers, and because
7 we're here today to address class certification
8 issues, these questions may touch on the
9 structure of your engagement with them.

10 I don't want you to tell me any legal
11 advice that they gave you or repeat any legal
12 questions you may have asked them. I only want
13 you to tell me the facts.

14 Do you understand?

15 A I do.

16 Q Did you discuss this deposition with
17 anyone prior to us starting this morning?

18 A Other than legal counsel, no.

19 Q Okay.

20 A My wife. I told my wife, obviously,
21 that we were having this.

22 Q Okay. Who among your legal team did
23 you talk to?

24 A Gosh, I talked to John Carriel, David
25 Enright, David Silver. I think those were the

1 three main people the last couple of days.

2 Q And -- go ahead.

3 A And Zach, I forget Zach's last name.

4 Q Mr. Ness?

5 A Yes.

6 Q And when did you talk to them?

7 A Over the course of the last three
8 days.

9 Q Was anyone else present when you had
10 these conversations with them?

11 A There was not.

12 Q Did you guys talk about the technology
13 that we're using today?

14 A About Zoom, yes.

15 MR. ENRIGHT: Objection, calls for --
16 the question clearly is eliciting
17 attorney-client communication. I'm going to
18 direct the witness not to answer.

19 BY MR. FOX:

20 Q Fine. Are you familiar with the
21 technology that we're using today?

22 A I am.

23 Q Do you feel comfortable using it?

24 A I do.

25 Q Mr. Fabian, is there any reason why

1 you cannot testify fully and truthfully today?

2 A Not that I know of, no.

3 Q Are you on any medication right now?

4 A I am not.

5 Q Have you consumed any alcohol this
6 morning?

7 A I have not.

8 Q Did you get enough sleep last night?

9 A I did.

10 Q Is there anything else we should know
11 about that would not allow you to testify fully
12 and truthfully?

13 A Not that I know of.

14 Q Mr. Fabian, would you please state
15 your full name?

16 A James Stefan Fabian.

17 Q Have you ever used any other names?

18 A I've got a nickname from elementary
19 school, Chubbs. And that actually has shown up
20 in like phone books and stuff. So on my -- it
21 comes up as an alias like on my credit report
22 sometimes. Somehow it's weaved its way in.

23 Q Okay. Are you the plaintiff in this
24 lawsuit?

25 A I am.

1 Q Mr. Fabian, why did you decide to
2 bring this lawsuit?

3 A Basically recoup some of the losses
4 for myself as well as other class members.

5 Q And what types of losses do you
6 believe you've suffered?

7 A Monetary losses from the BitGrail
8 exchange.

9 Q Whose idea was it to file the lawsuit?

10 A Well, it was my idea to go to Silver
11 Miller to pursue.

12 Q To pursue what?

13 A Just to see what my legal options
14 were.

15 Q Legal options for what, just so that
16 we're clear for the record?

17 A On how to recoup my losses.

18 Q Did anyone give you anything to file
19 this lawsuit?

20 A Can you expand? I don't know what
21 give me anything.

22 Q Did anyone pay you anything to file
23 this lawsuit?

24 A No, they didn't.

25 Q Did anyone give you a gift to file

1 this lawsuit?

2 A No, they didn't.

3 Q Did anyone promise you anything in
4 return for filing this lawsuit?

5 A No, no promises.

6 Q What do you expect to receive if you
7 win the case?

8 A Hopefully a recoup of the losses from
9 the XRB that was lost. I don't know how it
10 would be paid out, some kind of recouping.

11 Q What do you expect the class will
12 receive if you win this case?

13 A The same thing. Some kind of monetary
14 reimbursement from the amounts that were lost.

15 Q What do you expect to receive if you
16 lose this case?

17 A Nothing.

18 Q What do you expect the class will
19 receive if you lose this case?

20 A I assume nothing as well.

21 Q What do you think the effect on the
22 class' rights would be if you lose this case?

23 A I have no idea.

24 Q What do you expect to receive if you
25 settle this case?

1 A I have no idea.

2 MR. ENRIGHT: Objection, I'm going to
3 object to the extent that this question
4 impinges on attorney-client communications.

5 The witness can answer, but I caution
6 him not to divulge any information that he
7 received solely from his communications with
8 counsel.

9 BY MR. FOX:

10 Q Go ahead, you can answer, Mr. Fabian.

11 A I have no idea.

12 Q What do you think the class would
13 receive if you settled the case?

14 MR. ENRIGHT: Same objection.

15 THE WITNESS: I have no idea as well.

16 BY MR. FOX:

17 Q Do you expect to be treated any
18 different from the class members in terms of an
19 award if there is an award?

20 A I do not.

21 Q Who are your lawyers in this case?

22 A The law firm of Silver Miller, Levi &
23 Korinsky and Zelle.

24 Q How did you select these lawyers to
25 represent you?

1 A Originally it was with -- I went with
2 Silver Miller and I reached out and contacted
3 them.

4 Q When did you contact them?

5 A I don't know the exact date. It's
6 probably been about a year and a half or so.

7 Q So maybe late 2018, early 2019, would
8 that sound right to you?

9 A Probably somewhere around there.

10 Q Why did you choose to reach out to
11 Silver Miller?

12 A I had just -- you know, I had seen
13 talk about it. I can't remember exactly where.
14 It might have been Twitter or it might have been
15 one of these cryptocurrency boards that this was
16 out there, so I just wanted to explore my
17 options.

18 Q Do you remember who was making this
19 talk?

20 A I do not. And again, I can't remember
21 if it was Twitter or if it was some other kind
22 of online publication, but it was just brought
23 to -- I just thought that it was ongoing.

24 Q Had you ever worked with Silver Miller
25 before?

1 A I had not.

2 Q Had you ever heard of Silver Miller
3 before?

4 A I had not.

5 Q So how did you first hear of them?

6 MR. ENRIGHT: Objection, asked and
7 answered. You can answer.

8 THE WITNESS: Again, it was through
9 some -- again, I can't remember. It was
10 either through a Twitter posting, someone
11 talking about it on one of these
12 cryptocurrency forums. Something to that
13 effect.

14 BY MR. FOX:

15 Q Do you think that the post might have
16 been made by someone who's affiliated with
17 Silver Miller?

18 MR. ENRIGHT: Objection, calls for
19 speculation. You can answer.

20 THE WITNESS: I don't believe so. I
21 think there was just general talking about
22 it.

23 BY MR. FOX:

24 Q I'm going to ask that if you happen to
25 have any posts or notices by Silver Miller

1 related to this engagement that you -- or access
2 to any posts or notices related to this
3 engagement, that you produce them.

4 A Okay.

5 MR. ENRIGHT: I'm going to object to
6 that to the extent that any -- we've already
7 told you that any documents in plaintiff's
8 possession and control that are responsive
9 to your document request have been produced.

10 Any information that is out in the
11 public forum that he does not have
12 possession and control of, you're free
13 to --for yourself.

14 MR. FOX: Okay. Mr. Enright, I'm
15 preserving these calls for the record.
16 You're welcome to object to them. Usually
17 we just take them under advisement and you
18 and I can talk about it after the
19 deposition.

20 MR. ENRIGHT: That's fine.

21 BY MR. FOX:

22 Q Mr. Fabian, are you paying your
23 lawyers?

24 A I'm not.

25 Q What is your understanding of how they

1 are being compensated?

2 A Based on a contingency that through
3 any award through the court.

4 Q Do you know how much that contingency
5 is?

6 MR. ENRIGHT: Objection, calls for a
7 legal conclusion given that the amount would
8 be subject to --

9 MR. FOX: Don, there is no speaking
10 objections in this proceedings, so --

11 MR. ENRIGHT: Fine. Fair enough. I
12 will state my basis very simply. Objection,
13 calls for a legal conclusion.

14 BY MR. FOX:

15 Q Okay. You can still answer,
16 Mr. Fabian, although I will mention you were
17 frozen for a few seconds on my end.

18 Can you hear me?

19 A Yes, I was going to say I missed that.
20 I can now. I did miss that last question. It
21 did freeze on my end as well.

22 MR. FOX: Madam court reporter, can
23 you read back the question?

24 THE REPORTER: Sure.

25 (Requested testimony read by the

1 reporter.)

2 THE WITNESS: I believe it's about
3 33 percent. Somewhere around there.

4 BY MR. FOX:

5 Q Mr. Fabian, do you know if someone
6 else is paying your lawyers?

7 A I don't know.

8 Q Do you know whether anyone is loaning
9 them money in connection with this case?

10 A I do not know.

11 Q Did anyone other than your lawyers ask
12 you to sign anything related to financing this
13 case?

14 A They did not.

15 Q Do you have a written agreement with
16 your lawyers?

17 A I do.

18 Q Are there any terms in that agreement
19 that we did not just discuss?

20 A Not that I know of.

21 Q So it's your testimony that the
22 agreement simply says that they are working on
23 contingency at a rate of approximately
24 33 percent. There's nothing more in that
25 agreement to your knowledge. Is that your

1 testimony?

2 A I mean, there's a lot of stuff in the
3 document, of course. But related to fees, yes.

4 Q Okay. Do you know what the terms are
5 other than the terms concerning the fee?

6 A Off the top of my head, no.

7 Q I'm going to call for the production
8 of that agreement.

9 Are there any other written agreements
10 you have with your lawyers?

11 A Not that I know of.

12 Q Would you have an agreement with
13 someone that you didn't know about?

14 A No.

15 Q I just ask that you double check to
16 make sure that there's simply the one agreement
17 when you put together to collect those documents
18 for the production.

19 Do you have any non-written agreements
20 with your lawyers?

21 A I do not.

22 Q So just to clarify, your testimony is
23 that your lawyers never made any promises to you
24 that are not written down in that agreement we
25 were just speaking about; is that correct?

1 A Correct.

2 Q Did you make any promises to them that
3 are not written down?

4 A I did not.

5 Q Mr. Fabian, who are the defendants in
6 this action?

7 A The defendants I believe is the Nano
8 team, as well as -- his name is Bomber Firano.

9 Q Do you know who's on the Nano team
10 that have been sued in this case?

11 A Zack Shapiro, Mica Busch. Those are
12 the two names that I know.

13 Q What do you know about Zack Shapiro?

14 A Not much. I just know that he was in
15 development of the XRB Nano team. You know, he
16 was very vocal about it on Twitter over the past
17 few years. I think he continues to be. It
18 sounds like he was the lead person behind XRB
19 Nano.

20 Q Okay. And why did you decide to sue
21 him?

22 A This is based on advice to my counsel
23 and their investigation.

24 Q All right. Did they explain to you
25 why they thought it would be a good idea to sue

1 him?

2 A There was discussions on why they were
3 going that route.

4 MR. ENRIGHT: I object that this calls
5 for -- this question elicits attorney-client
6 communication. I'll direct you not to
7 answer.

8 MR. FOX: We may come back to this.

9 Q What do you know about Mica Busch?

10 A I wasn't too sure about his
11 involvement. He seemed more like a person that
12 was on Twitter doing a lot of the promotion of
13 it, of the brand of XRB Nano. We've seen a lot
14 of tweets, a lot of marketing type stuff.

15 I don't know what his official role
16 is, but that's how it seemed to me.

17 Q Are there allegations to that effect
18 in the complaint, do you know?

19 A I'm not sure.

20 Q And why did you decide to sue Mica
21 Busch?

22 A Again, it's based on advice of my
23 counsel and their investigation.

24 Q What are your claims against these
25 defendants?

1 A The -- you know, basically that there
2 was fraud, negligence and misrepresentation.

3 Q What is the basis for your fraud claim
4 against them?

5 A Again, that was based on my attorneys'
6 investigation and the recommendation.

7 Q What is the basis for the negligent
8 misrepresentation claim against them?

9 A Same. That was based on the
10 investigation of my lawyers.

11 Q And what is the basis for the
12 negligence claim against them?

13 A Again, based on an investigation of my
14 lawyers.

15 Q Do you recall any personal interaction
16 with either of the two defendants that you
17 identified?

18 A I don't believe so.

19 Q What are your damages in this case?

20 MR. ENRIGHT: Objection, calls for a
21 legal conclusion. You can answer.

22 THE WITNESS: At the time of the loss,
23 I think it was around the 275,000-dollar
24 range. But when this was all happening, the
25 accounts were frozen before we knew that the

1 XRB Nano was lost. So we couldn't move
2 them.

3 And word of this had spread and value
4 had started going down dramatically. So it
5 was valued at quite a bit more, but I think
6 at the time of finding out it was actually
7 no longer actually there, I think it was in
8 that 275 range.

9 BY MR. FOX:

10 Q Okay. Do you remember about a date
11 when you think it was worth -- well, strike
12 that.

13 What was worth \$275,000?

14 A The value of my XRB Nano.

15 Q Do you remember a date when -- and is
16 it your testimony that this is the XRB Nano that
17 you allege was lost?

18 A Correct.

19 Q Do you remember a date approximately
20 when you believe it was worth \$275,000?

21 A I don't know the exact date. I think
22 it was early -- I think it was 2018 when this
23 happened, January, February of that year, I
24 believe.

25 Q And how did you calculate that figure

1 of \$275,000?

2 A That was based on how much it was
3 worth. I believe on the day that it was
4 officially announced that the -- there was a
5 hack, the Nano currency was lost.

6 Q How did you determine how much it was
7 worth on that date?

8 A I believe there's logs on different
9 websites where you can look at how much a
10 currency was worth at any given day.

11 Q Do you have any sense as to how that
12 price -- the reported price is determined?

13 A I do not.

14 Q Mr. Fabian, what do you understand to
15 be the class' damages?

16 MR. ENRIGHT: Objection, calls for a
17 legal conclusion that the witness is not
18 qualified to provide. He can answer.

19 THE WITNESS: I believe as a class,
20 it's upwards of 170 million.

21 BY MR. FOX:

22 Q How did you calculate that figure?

23 MR. ENRIGHT: Objection, assumes facts
24 not in evidence.

25 BY MR. FOX:

1 Q You can go ahead and answer.

2 THE WITNESS: Do I still answer?

3 Based on the claims that -- not the
4 claims, based on the documents that I have
5 reviewed produced by my lawyers.

6 BY MR. FOX:

7 Q So is it your testimony that you
8 believe the class lost around \$170 million worth
9 of Nano?

10 A Correct.

11 Q And do you know anything more about
12 how your lawyers arrived at this figure?

13 A I do not.

14 MR. ENRIGHT: Objection, this question
15 again impinges on attorney-client
16 communications. I'm going to direct the
17 witness --

18 MR. FOX: Don, this is clearly facts.
19 We're talking about adding numbers. So
20 don't talk to me about legal advice.

21 If you want to instruct him not to
22 answer, you can instruct him not to answer
23 and we'll deal with that in due course.

24 MR. ENRIGHT: I'm going to ask the
25 court reporter to please read the question

1 back.

2 THE REPORTER: Sure.

3 (Requested testimony read by the
4 reporter.)

5 MR. ENRIGHT: So, again, I'm going to
6 direct the witness not to answer --

7 MR. FOX: And that's fine.

8 MR. ENRIGHT: No, it's a limited
9 instruction. You'll let me get it out.
10 Don't interrupt me.

11 I'm going to direct the witness not to
12 answer to the extent that what you learned
13 about this or you know about this was told
14 to you by your lawyers.

15 If you have an independent knowledge
16 of this subject matter that was not told to
17 you by your lawyers, then you can answer.

18 BY MR. FOX:

19 Q You can answer pursuant to that
20 instruction, Mr. Fabian.

21 A I believe the question was the total
22 amount or how I arrived at that?

23 Q Correct.

24 MR. ENRIGHT: No, that's not the
25 question. I would ask the court reporter to

1 read the question back again.

2 (Requested testimony read by the
3 reporter.)

4 THE WITNESS: Same answer. I don't.

5 MR. FOX: We can move on.

6 Q Mr. Fabian, what is the criteria for
7 membership in the class?

8 A I believe that all members in the
9 class, you know, have a commonality as far as
10 the claim and that there's also enough people to
11 support a class.

12 Q But how would someone know whether
13 they were in the class or not in the class?

14 A I don't know the answer to that.

15 Q Mr. Fabian, how old are you?

16 A Forty-one.

17 Q And what is the highest level of
18 education you've obtained?

19 A Bachelor of science.

20 Q And from what school was that degree
21 issued?

22 A Saint Mary's College of California.

23 Q The Gaels; correct?

24 A The Gaels, that's right.

25 Q Big basketball school?

1 A Yep.

2 Q What was your major?

3 A Business and economics.

4 Q And where do you live?

5 A In Discovery Bay, California.

6 Q How long have you lived there?

7 A Just over two years.

8 Q Okay. Where did you live in 2017?

9 A In Brentwood, California.

10 Q And in 2018, is that when you moved to
11 Discovery Bay?

12 A It is.

13 Q Are you currently working?

14 A I am.

15 Q Where do you work?

16 A I work for Lincoln Financial Group.

17 Q What does Lincoln Financial Group do?

18 A They do a lot. On my side I work for
19 the group division, which is employee benefits.

20 Q And what are your principal duties
21 there?

22 A I'm in sales.

23 Q What type of products do you sell?

24 A So we sell group benefits to large
25 employers, so we do dental insurance, life

1 insurance, vision insurance, disability
2 insurance.

3 Q When did you start working for Lincoln
4 Financial?

5 A I've been there for about four and a
6 half years.

7 Q And how are you currently paid?

8 A It's a combination of salary,
9 commission and bonus.

10 Q What is your baseline salary?

11 A At least 45,000.

12 Q And how much do you typically bring in
13 in commissions?

14 A I would say about 200,000.

15 Q And what have bonuses been like for
16 the last couple of years?

17 A Those are, depending on the year,
18 probably in the 10,000-dollar range.

19 Q This is a full-time job; is that
20 correct?

21 A It is.

22 MR. FOX: Okay. And madam court
23 reporter, we asked when Mr. Fabian started;
24 is that correct?

25 THE REPORTER: I'm not sure. Do you

1 want me to search for something?

2 MR. FOX: No, that's okay.

3 BY MR. FOX:

4 Q Mr. Fabian, at the risk of asking you
5 a question that I already asked, when did you
6 start at Lincoln Financial?

7 A It was about four and a half years
8 ago. The exact date must have been -- it was
9 around May 1st. Was that 2016? Around that
10 date.

11 Q Mr. Fabian, I'm going to introduce an
12 exhibit. I want to explain for the other
13 lawyers participating today how this is going to
14 work.

15 MR. FOX: You all should have access
16 to exhibit share; is that correct? If you
17 don't, it's not the end of the world because
18 there's some redundancy built into the
19 process.

20 MR. ENRIGHT: I thought that signing
21 up for this was exhibit share.

22 MR. FOX: Well, they are both from --
23 they are both programs from Veritext. And
24 you should have gotten two emails providing
25 credentials.

1 MR. SILVER: About an hour before the
2 deposition, I got a link from exhibit share.
3 Since we had some issues yesterday, it came
4 in separate about an hour or two before the
5 depo.

6 MR. FOX: Are you on there,
7 Mr. Silver?

8 MR. SILVER: Yes.

9 MR. FOX: So I'm going to introduce an
10 exhibit. It goes into a file on exhibit
11 share that is called something like -- I can
12 tell you precisely right now. It's called
13 double exclamation point marked exhibits.

14 If you ever need to refer to one of
15 the exhibits that I am not currently talking
16 about, for us old-school lawyers, this would
17 be like if you want to flip through the
18 stack, that's where it's going to be.

19 Q However, Mr. Fabian, for your purposes
20 and for the purposes of everybody following
21 along the examination, the way we're going to
22 look at these exhibits is through the share
23 screen function on Zoom.

24 So I'm going to introduce the exhibit
25 on exhibit share. Then I'm going to share my

1 screen and everybody can see it at the same
2 time.

3 Does that make sense to you,
4 Mr. Fabian?

5 A It does.

6 Q Okay. So bear with me for one moment.
7 I'm going to introduce the first exhibit.

8 A It's loading.

9 (Exhibit 1 was marked.)

10 BY MR. FOX:

11 Q This exhibit has been introduced to.
12 And, Mr. Fabian, I'm about to share it with you
13 and everyone else on our screen.

14 MR. FOX: Madam court reporter, I'm
15 getting a note that says, "Host disabled
16 participant screen sharing."

17 THE REPORTER: Are you in exhibit
18 share?

19 (Discussion off the record.)

20 MR. FOX: Let's go off the record for
21 a second while we --

22 VIDEOGRAPHER: Going off the record at
23 10:54 a.m. This is the end of Media 1.

24 (Recess taken.)

25 VIDEOGRAPHER: We're on the record at

1 11:04 a.m. This is the beginning of Media 2
2 in the deposition of James Fabian.

3 MR. FOX: Mr. Fabian, right before we
4 broke, I introduced a document as our first
5 exhibit. It is labeled Exhibit 1.

6 Counsel, I'm just wondering if I can
7 get a stipulation on the record, you know,
8 per the local rules that in terms of
9 numbering convention, we just go
10 sequentially 1 through however many
11 deposition exhibits there end up being in
12 this case?

13 MR. ENRIGHT: So you want to have
14 consecutively numbered across all
15 depositions, not separately numbered per
16 deposition?

17 MR. FOX: Yes, I think that is
18 actually required.

19 MR. ENRIGHT: If that's the rule, then
20 fine.

21 MR. FOX: All right. Great.

22 Q Mr. Fabian, right before we broke --
23 just waiting for Mr. Silver to come back.
24 Everybody does need to be on camera all the
25 time.

1 Before we broke, we enabled the screen
2 sharing function on my Zoom, so I'm going to
3 show you this document that we've now introduced
4 as Exhibit 1.

5 Can you see it now?

6 A Yes.

7 Q This document, Exhibit 1, bears a
8 header that makes it evident that the document
9 was filed on the court docket in this case as
10 Document Number 58.

11 Have you ever seen this document
12 before, Mr. Fabian?

13 A I believe -- they all look familiar,
14 but this one does look familiar, yes.

15 Q What is it?

16 A This here, this is the -- I guess the
17 claim that was filed.

18 Q Okay. Do you know anything more about
19 it?

20 A I mean, I just know the basics of it.

21 Q Fair to say it's your first amended
22 class action complaint?

23 A It looks like it.

24 Q Have you read this document before,
25 Mr. Fabian?

1 A I believe I have.

2 Q Is there any doubt that you've read
3 it?

4 A No, I just think there might be
5 different versions, but I believe I've read
6 everything.

7 Q If I represented to you that this is
8 the operative complaint, the last complaint that
9 was filed in the case, would you have any reason
10 to doubt that?

11 A No.

12 Q Does that change your testimony as to
13 whether you're sure you read it or not?

14 A It does not.

15 Q Mr. Fabian, I want to add as a
16 technical point, I believe if you go up to the
17 top of your screen and you click on "annotate,"
18 that will allow you to move around in the
19 document in case you want to look at a page that
20 I'm not talking about.

21 I don't think you need to do that
22 right now, but I just want to make you aware of
23 that functionality. Okay?

24 A Okay.

25 Q Do you believe that all of the factual

1 allegations made in this complaint are true?

2 A I do.

3 Q Did you go through each paragraph with
4 your attorneys and confirm that all of the
5 statements are accurate and that all of the
6 allegations reflect your actual experiences?

7 A We did.

8 Q And if there was a fact alleged in
9 here that you weren't sure about, did you ensure
10 that that fact was pled on information and
11 belief?

12 A I would have, yes.

13 MR. FOX: Does somebody need to go on
14 mute? I'm not sure what that noise was.

15 MR. ENRIGHT: There is a lawnmower
16 outside my office right now that
17 unfortunately I can't mute. So...

18 MR. FOX: Weird that we all have that
19 power. Not a problem.

20 Q All right. Mr. Fabian, I'm going to
21 take you into this complaint all the way down to
22 Page 43.

23 A Okay.

24 Q And we're going to look at
25 Paragraph 183.

1 Do you see Paragraph 183 where it
2 says, and I'm quoting, "Commencing in or around
3 April-May 2017, plaintiff Fabian learned about
4 XRB by reading social media posts touting XRB --
5 including but not limited to those published on
6 Twitter -- exemplars of which are incorporated
7 throughout this amended complaint"?

8 A I see that.

9 Q Is it true that you first learned
10 about XRB in April or May of 2017?

11 A It is.

12 Q When did you first learn about the
13 BitGrail cryptocurrency exchange?

14 A Oh, gosh. It wasn't for a while after
15 that. I don't know specific date.

16 Q Do you have any sense as to how long
17 after April/May 2017 you learned about BitGrail?

18 A Probably a couple of months after
19 that. I don't even know if it existed back in
20 April/May, 2017. But I think it was a couple of
21 months after.

22 Q If I told you there were allegations
23 in the complaint where you claim that you know
24 the date that BitGrail was founded, would that
25 sound wrong to you?

1 MR. ENRIGHT: Objection.

2 THE WITNESS: That would --

3 MR. ENRIGHT: Misstates the record,
4 assumes facts not in evidence.

5 BY MR. FOX:

6 Q You can answer.

7 A I would not know the exact date it was
8 founded.

9 Q But it's your testimony you're not
10 sure it was in existence in April or May 2017;
11 is that correct?

12 A I'm not sure. I don't believe it was,
13 but I'm not sure.

14 Q When did you first learn that you
15 could buy or sell XRB on BitGrail?

16 A I'm not sure of the exact date. I
17 think around that time.

18 Q You broke up a little bit at the end
19 there. Can you repeat your answer?

20 A Yes, it was a couple of months after
21 that that I purchased --

22 THE REPORTER: Okay. The witness is
23 distorting obviously, so we need to
24 troubleshoot.

25 MR. FOX: Okay. Can we go off the

1 record for a moment while the videographer
2 troubleshoots that because I also lost the
3 image for a little while there.

4 THE REPORTER: Okay.

5 VIDEOGRAPHER: We're going off the
6 record at 11:12 a.m. This is the end of
7 Media 3.

8 (Recess taken.)

9 VIDEOGRAPHER: We are on the record at
10 11:15 a.m. This is the beginning of Media 3
11 in the deposition of James Fabian.

12 MR. FOX: Okay. Mr. Fabian, I
13 understand that your last answer was
14 somewhat distorted because of technical
15 problems. So we're going to have the court
16 reporter read back the last pending question
17 and I'm going to ask that you answer it a
18 second time.

19 THE WITNESS: Okay.

20 THE REPORTER: Okay.

21 (Requested testimony read by the
22 reporter.)

23 THE WITNESS: Okay. Yes, so I believe
24 I first purchased in August, so I would have
25 known about the BitGrail website around that

1 time.

2 BY MR. FOX:

3 Q Let's go ahead and look one paragraph
4 down in the complaint, Paragraph 184. And also
5 Paragraph 185.

6 Do you see where it says, quote, "As
7 part of his due diligence in learning about XRB,
8 Plaintiff Fabian followed (i.e. subscribed to)
9 the Twitter feeds of Defendant LeMahieu,
10 Defendant Shapiro and other people related to
11 XRB."

12 And then it continues in
13 Paragraph 185, "After months of following the
14 representations published by those people and
15 relying on the truthfulness of their
16 representations, Plaintiff Fabian began
17 investing in XRB."

18 A That's correct.

19 Q I missed that. Did you testify that
20 you see that?

21 A Yes, I do.

22 Q Is it true that you followed the
23 social media accounts of these individuals for
24 months before you bought any XRB?

25 A So following like officially follow on

1 Twitter, like request to follow them, I don't
2 know if I officially followed all of them. But
3 what I would do was put in search terms, which
4 would be XRB or Nano, and then these people's
5 feeds would come up that were talking about it.
6 So I would follow different Twitter accounts
7 that were talking about it and they were part of
8 those tweets that I saw.

9 Q Okay. And in Paragraph 184, does the
10 reference to -- and I'm quoting here --
11 Defendant LeMahieu refresh your recollection as
12 to who some of the other defendants in this case
13 are?

14 A I do recognize, I think, Zack Shapiro.

15 MR. FOX: Okay. This was -- this was
16 so easy, I'm going to introduce another
17 exhibit and share that. So bear with me for
18 a moment. I'm going to leave the share
19 screen.

20 Again, counsel, if you need to refer
21 back to this Exhibit 1, which is the amended
22 complaint, that's in the exhibit share
23 folder. And I want to introduce a second
24 exhibit and put that up on the screen
25 momentarily.

1 I'm going to share my screen so
2 hopefully everyone can see this new exhibit,
3 which is Exhibit Number 2.

4 (Exhibit 2 was marked.)

5 BY MR. FOX:

6 Q Mr. Fabian, can you see this document?

7 A I can.

8 Q Can you see it's been marked Exhibit
9 Number 2?

10 A I do.

11 Q This document is titled "Lead
12 Plaintiff's Second Supplemental Responses and
13 Objections to Defendants' First Set of
14 Interrogatories."

15 Have you ever seen this document
16 before, Mr. Fabian?

17 A Yes.

18 Q What is it?

19 A I believe this is the -- like it says,
20 just responses from me on what the -- what the
21 questions brought to me by my attorneys.

22 Q Do you know where those questions came
23 from?

24 A I do not.

25 Q Did you write any part of this

1 document, Mr. Fabian?

2 A I did not.

3 Q Who wrote it?

4 A I believe my legal team.

5 Q Did they ask you what they should
6 write?

7 A They did not.

8 Q How do you think they knew how to
9 answer it if they didn't ask you what they
10 should write?

11 MR. ENRIGHT: I object to this whole
12 line of questioning. Again, this is seeking
13 attorney-client communications. I'm going
14 to direct the witness not to answer. You
15 cannot ask a question about conversations he
16 had with his counsel or questions his
17 counsel asked him. Come on.

18 BY MR. FOX:

19 Q Let's go to the last page.

20 Before we go to the last page, I'll
21 put it there so you can look at it.

22 Are these answers true to the best of
23 your knowledge and belief, Mr. Fabian?

24 A Are you asking me a question?

25 Q I'm asking you a question.

1 A I'm not following. I see a
2 verification that I signed. Are you asking if I
3 signed that correctly?

4 Q No. I'm going to ask you about that
5 in a moment.

6 But the answers that are contained in
7 these responses, are they true?

8 A Yes.

9 Q How do you know that they are true?

10 A I answered everything to the best of
11 my knowledge.

12 Q To whom did you give those answers?

13 A To my legal team.

14 Q Let's take a look at the verification.
15 I apologize for scrolling away there.

16 Do you see where it says, "I, James
17 Fabian, am lead plaintiff in this action. I
18 believe based on reasonable inquiry that the
19 foregoing answers are true and correct to the
20 best of my knowledge, information and belief. I
21 verify under penalty of perjury that the
22 foregoing is true and correct."

23 A Yes, I see that.

24 Q And is that your signature below the
25 verification?

1 A It is.

2 Q And did you actually sign that with a
3 pen or is that some other form of signature?

4 A It's electronic form.

5 Q And did you review each answer to each
6 interrogatory before you signed this?

7 A I did.

8 Q Let's go back up to Page 4.

9 Do you see under the heading
10 Interrogatory Number 1 where it says, "Identify
11 each challenged statement, if any, made by, A,
12 Colin LeMahieu; B, Mica Busch; C, Zack Shapiro;
13 D, Troy Retzer; and E, Hieusys LLC.

14 "In this interrogatory, 'identify'
15 means to quote or describe in detail the
16 challenged statement to state the medium or
17 media through which the statement was made
18 (e.g., email, Twitter post, telephone
19 conversation), and to state where, when and by
20 whom and to whom the challenged statement was
21 made."

22 A I see that.

23 Q Do you know what is meant here by a
24 challenged statement?

25 A I would need some more clarification

1 on challenged statement.

2 Q How did you know that this answer was
3 truthful if you did not understand what was
4 meant by challenged statement?

5 A I saw this document awhile ago. So
6 I'm sure we went through it at the time.

7 Q So it's your testimony that at one
8 point you understood what was meant by
9 challenged statement but you don't remember it
10 sitting here today?

11 A Yes. I would need a refresher.

12 Q Okay. Let's see if we can refresh
13 your recollection.

14 MR. FOX: I'm going to introduce a
15 third exhibit. Bear with me for one moment.

16 (Exhibit 3 was marked.)

17 MR. FOX: Okay. I've introduced
18 another document, which is marked as
19 Exhibit 3. I'm about to share this document
20 with everyone through the share screen
21 function.

22 BY MR. FOX:

23 Q Mr. Fabian, can you see a document
24 that's now marked Exhibit 3?

25 A I can, yes.

1 Q Have you seen this document before?

2 A I believe I have, yes.

3 Q Do you know what it is?

4 A This is the interrogatories.

5 Q And are these the questions that you
6 were answering in Exhibit 2 that we were just
7 looking at?

8 A I don't see any questions on the
9 screen.

10 Q If we go down to Interrogatory
11 Number 1, which is on Page 5, do you see the
12 first question there?

13 A I don't see a question. I see a
14 statement, I guess.

15 Q It's phrased in the indicative tense.
16 But does that -- does the text under the heading
17 "Interrogatory Number 1" look familiar to you?

18 A Yes.

19 Q And is it the same as the text we
20 looked at a moment ago that you were providing a
21 response to in your answers to the
22 interrogatories?

23 A I believe so.

24 Q Okay. So let's go up to the top of
25 this document.

1 Do you see the heading "Definitions"?

2 A Correct.

3 Q Do you see the third definition here
4 where it says, quote, "Challenged statement
5 shall mean any statement, including any oral or
6 written communication, phrase, or image that you
7 challenge in this action as a misrepresentation.
8 Challenged statements include all statements on
9 which you base your fraud and negligent
10 misrepresentation claims."

11 Does that refresh your recollection as
12 to what is meant by "challenged statement"?

13 A It does, yes.

14 Q Let's go back to the answers. Give me
15 one moment, I'll put those up.

16 Are you looking at Exhibit 2 now
17 again, Mr. Fabian?

18 A I am.

19 Q Let's go back to Page 4. And at the
20 bottom of the page do you see the heading
21 "Response to Interrogatory Number 1"?

22 A I do.

23 Q And going further down on to the next
24 page, do you see the part of the response where
25 it says, "Subject to the foregoing objections,

1 plaintiff states that the challenged statements
2 are set forth in detail in the operative
3 complaint pending in this action. Specifically,
4 the operative complaint contains all challenged
5 statements of which lead plaintiff is currently
6 aware. Stated otherwise, based on lead
7 plaintiff's current information, the challenged
8 statements are limited to those in the operative
9 complaint. These challenged statements from the
10 operative complaint, the means of their
11 dissemination and those to whom lead plaintiff
12 believes those challenged statements were made
13 may be found as to each of the listed defendants
14 in the operative complaint as follows."

15 And then do you see where by defendant
16 you've listed a set of paragraphs?

17 A I do.

18 Q And are these the paragraphs of your
19 amended complaint that contain allegations of
20 statements that you contend were false or
21 misleading?

22 A Without seeing the paragraphs
23 themselves, I believe so.

24 Q Given what I just read to you about
25 the response, do you have any reason to think

1 that you referred to a paragraph that does not
2 contain a statement that you contend was false
3 or misleading?

4 A I do not.

5 Q Let's go a little bit further down and
6 look at Page 6 of your answers.

7 At the very bottom of Page 6, do you
8 have the heading "Interrogatory Number 3"?

9 A I do.

10 Q Do you see where it says, "For any
11 challenged statement you contend was not made to
12 you, describe in detail the date on which and
13 the circumstances in which you received it"?

14 A I see that.

15 Q And if we go below -- now we're on
16 Page 7 under the heading "Response to
17 Interrogatory Number 3."

18 Do you see in relevant part where you
19 or your counsel has written, "Subject to the
20 foregoing objections, plaintiff states that the
21 challenged statements were generally received
22 and viewed by plaintiff on the internet promptly
23 after they were disseminated. Specifically, and
24 without excluding any challenged statement not
25 mentioned or otherwise covered within this

1 response, Mr. Fabian attests to viewing the
2 following statements from the operative
3 complaint at or around the time those statements
4 were made, and attests that these statements
5 influenced his decision-making in regards to his
6 activities dealing with Nano, XRB and BitGrail."
7 And then there is a list of paragraphs that
8 you're referring to.

9 Do you see that?

10 A I do.

11 Q By this answer, do you mean that you
12 received and read each of the challenged
13 statements referenced in your response to
14 Interrogatory Number 1 around the time that each
15 statement was made?

16 A Correct.

17 Q Okay. You mentioned a moment ago that
18 you wanted to look at the individual challenged
19 statements. And you're in luck because we're
20 going to do that.

21 So why don't we start with the
22 challenged statements that you attribute to
23 Colin LeMahieu.

24 Do you see the list of numbered
25 paragraphs that follow Mr. LeMahieu's name in

1 your response to Interrogatory Number 1?

2 A I do.

3 Q So let's start with Paragraph 69. I'm
4 going to stop sharing this document and pull up
5 the complaint and we'll take a look at
6 Paragraph 69.

7 MR. SILVER: I need to step out for
8 one minute if you want to stop while you're
9 doing this so I'm not disappearing --

10 MR. FOX: Mr. Silver, I just ask you
11 to hold on for one second until we get this
12 up. I'm just going to ask him one question
13 on 69 and then --

14 MR. SILVER: Whatever is easiest. I
15 was willing to let you keep going.

16 MR. FOX: Yes. So if you just bear
17 with me for one moment, we'll have this up
18 in 15 seconds.

19 Q Mr. Fabian, are you looking again at
20 Exhibit Number 1?

21 A I am.

22 Q Let's go take a look at Paragraph 69.
23 Do you see Paragraph 69 in front of
24 you?

25 A I do.

1 Q Can you identify -- and I'll make it a
2 little bigger so it's easier to see. Can you
3 identify the statement that you contend was
4 false or misleading?

5 MR. ENRIGHT: Objection, calls for a
6 legal conclusion. The witness can answer.

7 THE WITNESS: It's really small on my
8 side.

9 BY MR. FOX:

10 Q I tried to make it bigger. Did it get
11 bigger for you?

12 A It got a little bigger, yes.

13 Q I'll make it even bigger.

14 A There we go. Can you repeat the
15 question on this one?

16 Q Can you identify the statement in this
17 paragraph that you contend was false or
18 misleading?

19 A The communication in general was just,
20 you know, advertising the XRB at the time and
21 how promising it was.

22 Q What is the specific statement that
23 you're talking about?

24 MR. ENRIGHT: Same objection. You can
25 answer.

1 THE WITNESS: I'm going off the
2 initial line, "Disrupting web advertising:
3 Freemium content through RaiBlocks
4 micropayments." And then underneath it says,
5 "This is promising."

6 "Follow us on Twitter @RaiBlocks to
7 help get the word out."

8 BY MR. FOX:

9 Q Okay. Is your testimony that you
10 contend all of those statements were untrue?

11 A I don't -- I wouldn't take a stance on
12 true or untrue. This is more like solicitation
13 to follow our XRB that it was promising.

14 Q So the statement you're talking
15 about -- just to be clear for the record, the
16 statements you are talking about are all of the
17 statements in the screenshot?

18 A Correct.

19 Q Can you see when this statement was
20 made?

21 A From the standpoint of the person that
22 posted it?

23 Q Yes.

24 A Yes, I believe --

25 Q Go ahead.

1 A I'm sorry, did you say when it was
2 made?

3 Q Yes. Do you see when this was made?

4 A Oh, it says three years ago.

5 Q Do you see a box in the upper
6 left-hand corner?

7 A Yes, February 27th, 2016.

8 Q When did you first read this
9 statement?

10 A I don't know the exact date, but
11 probably around the same time or so.

12 Q Okay. So you'll recall we looked at
13 Paragraph 183 of the complaint where you allege
14 that you first learned about XRB in May or June
15 of 2017.

16 How did you read this statement if you
17 didn't know about XRB at the time?

18 A It may have been after -- again, I did
19 a lot of searching, so when I do my research,
20 you can type in a three-letter word like an
21 XR -- dollar sign XRB and do searches. So I did
22 countless hours of that, so it might have been
23 through one of my searches.

24 Q Do you think you could have seen this
25 after April or May 2017?

1 A It could have been, yes. I don't know
2 the exact date.

3 Q Do you recall that we just looked at
4 your response to Interrogatory Number 3 where
5 you said that you read all of the challenged
6 statements in or around the time that they were
7 made?

8 A Yes.

9 MR. ENRIGHT: Objection, incomplete
10 response, incomplete and inaccurate
11 recitation of the record.

12 BY MR. FOX:

13 Q Mr. Fabian, would you like an
14 opportunity to amend your response to
15 Interrogatory Number 3?

16 A I don't believe so. I mean, again, I
17 don't know the dates I saw -- the exact dates I
18 saw these. This one just looked familiar to me,
19 so I assumed that I had seen it. And I couldn't
20 put an exact date on when I saw it.

21 Q Would you say that looking at a
22 document 13 months after -- or strike that.

23 Would you say that reading a statement
24 13 months after it was made was looking at it in
25 or around the time that it was made?

1 A I mean, I think it's relative. It's
2 current.

3 Q So you think reading a statement over
4 a year after it was made is current. Is that
5 your testimony?

6 MR. ENRIGHT: Objection,
7 argumentative, asked and answered.

8 MR. FOX: Let's move on.

9 Q Mr. Fabian, what is -- what do you
10 contend is false or misleading about these
11 statements that you identified in Paragraph 69?

12 A I don't know if there's anything false
13 in this. This is just an advertisement to
14 say -- in my mind to say how the product is a
15 good product and to start following.

16 Q Do you recall the definition of
17 "challenged statement" that we looked at a
18 moment ago in the interrogatories?

19 A Yes.

20 Q What was that definition
21 approximately?

22 A I cannot tell you offhand.

23 Q If I told you that it was to identify
24 statements that you believed were
25 misrepresentations, would that sound wrong to

1 you?

2 A It would not sound wrong.

3 Q So can you identify the
4 misrepresentation that you see here in
5 Paragraph 69?

6 A I can't.

7 Q I'm sorry, can you repeat the answer?

8 A I can't, no.

9 Q Okay. Let's move on to Paragraph 72,
10 which is the next challenged statement that's
11 disclosed in your answers to interrogatories.

12 MR. SILVER: I need a two-minute
13 bathroom break. You can keep going if you
14 want. I have no objection to you
15 continuing.

16 MR. FOX: Let's keep going.

17 MR. SILVER: I'll leave my video on so
18 you can see when I run in and out.

19 MR. FOX: Let's keep going. We are
20 under time pressure here.

21 Q Okay. Paragraph 72, this is one of
22 the paragraphs that you identified as containing
23 a challenged statement made by Mr. LeMahieu;
24 correct?

25 A I believe so.

1 Q I'm going to represent to you that it
2 is.

3 Can you identify the challenged
4 statement in this paragraph? And let me make it
5 a little smaller so you can see the whole thing.

6 A The question was on its
7 misrepresentation?

8 Q Correct. That -- can you identify a
9 misrepresentation -- the statement that you
10 contend is a misrepresentation in this
11 paragraph?

12 A I don't know if there is a
13 misrepresentation on this one.

14 Q Okay. Why did you refer to it in your
15 response to Interrogatory Number 1 that called
16 for the identification of challenged statements
17 which are misrepresentations?

18 A These were just things that I saw that
19 looked familiar to me that were items that made
20 me want to buy XRB Nano and made me want to
21 follow it.

22 Q Does that sound responsive to
23 Interrogatory Number 1 to you?

24 MR. ENRIGHT: Objection,
25 argumentative.

1 THE WITNESS: I'm not sure what you
2 mean by "responsive."

3 BY MR. FOX:

4 Q Does that basis for including this
5 statement or referring to this paragraph in your
6 answer to Interrogatory Number 1 sound like you
7 were answering the interrogatory?

8 MR. ENRIGHT: Objection, calls for a
9 legal conclusion. You can answer.

10 THE WITNESS: I thought so at the
11 time.

12 BY MR. FOX:

13 Q Have your thoughts changed on that
14 matter?

15 A Again, it just looks like these
16 were -- certain statements that were presented
17 were just ones on why I followed the Nano XRB
18 currency, why I purchased it and that's what I
19 was trying to point out.

20 Q Mr. Fabian, do you see when this
21 statement was made?

22 A March 3rd, 2016.

23 Q And when do you think you read it?

24 A Again, I'm not exactly sure, just
25 through my research.

1 Q It had to be after April or May 2017;
2 right?

3 A It probably was.

4 Q If it wasn't, then your allegation in
5 the complaint that you first learned about XRB
6 in April or May 2017 wouldn't be true, would it?

7 A I'm sorry, you broke up there.

8 Q If it was before -- if you read this
9 statement before April or May 2017, then your
10 allegation in Paragraph 183 of the complaint
11 would not be true, would it?

12 A I don't know about that. Again, I
13 don't know the exact date that I read this. So
14 the dates that I presented on when I found out
15 or first learned about XRB Nano, that was by the
16 latest date that I can remember finding out
17 about it. It could have been earlier.

18 But to the best of my knowledge,
19 that's when I first started following and doing
20 research into it.

21 Q Do you recall whether Paragraph 183
22 was pled on information and belief?

23 A If it was what?

24 Q Pled on information and belief.

25 A I'm not sure what that --

1 Q Did you qualify that allegation in
2 Paragraph 183 that you believed that you first
3 learned about Nano in April or May, did you
4 qualify that statement in any way?

5 A Qualify as like show proof?

6 Q No, qualify as put in a caveat that
7 maybe you learned about it earlier.

8 A I can't remember. I was going based
9 on my memory when I did start following.

10 Q All right. Why don't we move on to
11 the next paragraph, that's Paragraph 86.

12 Can you identify the statement in
13 Paragraph 86 that you contend was a
14 misrepresentation?

15 A Are you able to make that larger?

16 Q Yes, sure.

17 MR. ENRIGHT: On my screen when you
18 make that larger, it cuts off a portion of
19 the actual graphic.

20 MR. FOX: Don, are you able to move
21 the windows to the side? That's what I had
22 to do to see the whole thing.

23 MR. ENRIGHT: No, no, it cuts it off
24 at the bottom.

25 MR. FOX: Oh, yes, okay. All right.

1 (Discussion off the record.)

2 MR. FOX: Yes, it doesn't look like
3 there's any statements in the text so let's
4 just look at the screenshot.

5 Q Is that a good size for you,
6 Mr. Fabian?

7 A Yes, I can read it.

8 Q Okay.

9 A Okay. I read it.

10 Q Can you identify the statement that
11 you believe is a misrepresentation in this
12 screenshot?

13 A Again, on this one, I don't know if
14 there is a misrepresentation. This was just
15 brought forward on why I followed and started
16 doing research and ending up buying XRB Nano.

17 Q When was this statement made,
18 Mr. Fabian?

19 A It looks like March 4th of 2016.

20 Q Okay. When did you first read it?

21 A I don't know the exact date. Again,
22 through my research at some point.

23 Q Do you think it was before March or --
24 excuse me. Strike that.

25 Do you think it was before April or

1 May 2017?

2 A I'm not sure, to be honest.

3 Q Do you think it was right after the
4 statement was made?

5 A Honestly, I couldn't tell you on the
6 exact date I saw it.

7 Q Mr. Fabian, I'm going to represent to
8 you that there are a number of paragraphs
9 referenced in your answer to Interrogatory
10 Number 1 --

11 A Mm-hmm.

12 Q -- that don't appear to contain any
13 false or misleading statement. Up to you, we
14 can go through all of them if you want.

15 But I'm sitting here telling you, in
16 the interest of saving you face and saving us
17 all time, that there are a number -- in fact,
18 all of the referred -- referenced paragraphs
19 that don't contain statements with arguable
20 misrepresentations.

21 I'm also going to represent to you
22 that a great number of these statements were
23 made before March or April 2017.

24 Do you want an opportunity to revise
25 your answers to those interrogatories, either

1 your answer to Interrogatory Number 1 in which
2 you refer to all of these paragraphs that do not
3 appear to contain misrepresentations or your
4 answer to Interrogatory Number 3 in which you
5 represented under oath that you read each one of
6 these statements in or around the time that it
7 was made?

8 MR. ENRIGHT: Objection, compound
9 question. If you want to ask him those two
10 subparts separately, I think that will be a
11 lot more answerable.

12 MR. FOX: Fair point.

13 Q Mr. Fabian, would you like an
14 opportunity to revise your answer to
15 Interrogatory Number 1?

16 A I don't believe so. Again, these
17 were -- the things that are being presented were
18 things that looked familiar to me that I thought
19 I had seen and that I based my decisions on. So
20 I don't know if all of them specifically said,
21 you know, fraud or misrepresentation or
22 negligence.

23 Again, some of them were -- I was just
24 going to ask if this was represented for that,
25 this is familiar, these are reasons I bought the

1 coin in the first place, this is the reason I
2 went to BitGrail eventually to buy it.

3 Q Do you know whether any of the
4 paragraphs that you referred to in your response
5 to Interrogatory Number 1 contain
6 misrepresentations?

7 A Not off the top of my head, no.

8 Q Is it possible that none of them do?

9 A I would have to read them all to see.

10 Q All right. Let's -- well, you're in
11 luck because we're going to go through them.

12 With respect to Interrogatory
13 Number 3, would you like to change your response
14 to that?

15 A Which one was Number 3?

16 Q Where you responded under oath that
17 you -- and confirmed it in this deposition that
18 you read and relied on each one of these
19 statements in or around the time that it was
20 made.

21 A I don't know the exact dates, but
22 these were ones that were familiar to me that I
23 had seen at some point and I consider current.

24 Q So is your testimony you don't want to
25 change your response to Interrogatory Number 3?

1 A Correct.

2 Q Let's keep going. We were at 86,
3 let's take a look at 89.

4 Mr. Fabian, look at Paragraph 89,
5 please. I'm going to back it out a little bit
6 which might make it easier to see.

7 Mr. Fabian, would you please identify
8 the statement that you contend is a
9 misrepresentation in Paragraph 89?

10 A I don't know if I see anything
11 fraudulent. This is information I saw in my
12 research in order to buy the coin.

13 Q Can you identify the statement that
14 you were referring to in your response to
15 Interrogatory Number 1?

16 A Well, I think just -- there's just the
17 one statement, which is the one that begins
18 with, "Hey, guys."

19 Q So this is the statement that says,
20 "Hey guys, the short of the story is I think we
21 have a way to make the faucet work and scale.
22 We'll total up faucet clicks and pay them out in
23 bulk daily rather than hourly or instantly.
24 This addresses the load concern that was
25 bringing the faucet to its knees and would have

1 destroyed the distribution if it had continued."

2 Is that the statement you're referring
3 to?

4 A Correct.

5 Q When was that statement made?

6 A Three years ago. I don't see a date.

7 Q If you look at the first line of the
8 paragraph, April 3rd, 2016.

9 Do you see that?

10 A I do.

11 Q Is it fair to say the statement was
12 probably made in or around April 3rd, 2016?

13 A I would assume so, yes.

14 Q When did you read this statement?

15 A Again, I'm not sure of the exact date.

16 Q Do you think it was before April or
17 May 2017?

18 A It was probably around that time.

19 Q So fair to say you didn't read it in
20 or around April 3rd, 2016?

21 A Again, I don't know the exact date
22 that I saw it. I researched literally thousands
23 of posts and so it's impossible to say what
24 date.

25 Q Were you researching posts around

1 April 3rd, 2016?

2 A I can't remember, to be honest.

3 Q If you had been researching posts
4 around April 3rd, 2016, do you think you might
5 have learned about XRB before April or June
6 2017?

7 A I think it's possible. There's
8 hundreds or thousands of coins out there. So
9 there was -- I don't know.

10 Q All right. Let's go to Paragraph 94.

11 And Paragraph 94 appears to be the
12 same as -- it appears to include the same set of
13 statements that we looked at in Paragraph 86.

14 Any reason to disagree with that,
15 Mr. Fabian?

16 A I don't believe so.

17 Q So fair to say your testimony about
18 Paragraph 94 would be the same as your testimony
19 about Paragraph 86?

20 A Correct.

21 Q Let's move on to Paragraph 96.

22 Mr. Fabian, can you identify the
23 statement in Paragraph 96 that you contend was a
24 misrepresentation?

25 A It's kind of cut off here. Let me see

1 if I can move it.

2 Q I think it's just this quote here in
3 the second part of the paragraph that begins
4 with, "Part of the reason."

5 A Okay. I've read it.

6 Q Is that the statement you contend was
7 a misrepresentation?

8 A Again, this is a statement that looks
9 familiar to me from my research. I don't know
10 if there's any misrepresentation in it or not.

11 Q Does it seem like a misrepresentation
12 to you sitting here today?

13 MR. ENRIGHT: Objection, calls for a
14 legal conclusion. But you can answer.

15 THE WITNESS: No, it appears more of a
16 statement of what they are doing.

17 BY MR. FOX:

18 Q When was this statement made,
19 Mr. Fabian?

20 A It says March 19th, 2016.

21 Q When did you first read it?

22 A Again, I don't know the exact date.

23 Q Possible it was before April or May
24 2017?

25 A It could be possible.

1 Q Possible it was some time not in or
2 around March 19, 2016?

3 A It's possible. Again, I don't know
4 the exact date.

5 Q Let's go to 97.
6 Can you see 97 okay?

7 A Yes.

8 Q We've got a quote in the text of the
9 paragraph and we've got a screenshot.
10 Can you identify the statement in
11 Paragraph 97 that you contend was a
12 misrepresentation?

13 A Are you able to scroll down a little
14 bit?

15 Q Yes. I just want to give you a chance
16 to read the first statement that's quoted.

17 A Yes, got that.

18 Q And then I'll even blow this up a
19 little bit for you.

20 A Thank you.

21 Okay. I read it.

22 Q Can you identify the statement that
23 you contend was a misrepresentation?

24 A Again, I don't know if there was any
25 misrepresentation in here. This is just

1 something that looked familiar to me when I was
2 doing the XRB faucet and information I found.

3 Q All right. When was this statement
4 made?

5 A It was March 19th, 2016.

6 Q And when did you first read it?

7 A I don't have an exact date. I don't
8 know.

9 Q Possible it was before April or May
10 2017?

11 A It's possible.

12 Q Possible it wasn't in or around
13 March 19, 2016?

14 A I guess it's possible.

15 Q Let's go to 98. I'll zoom out here.
16 Can you identify the statement in
17 Paragraph 98 that you contend was a
18 misrepresentation?

19 A I don't know if I see any
20 misrepresentation. This is just information
21 about being posted on some bigger exchanges.

22 Q Anything that could be a
23 misrepresentation?

24 A I mean, I don't know. There was a lot
25 of talk about getting put on bigger exchanges

1 like Bittrex and Poloniex and C-Cex. And I know
2 that didn't happen, so I don't know -- when
3 something like that does happen in the
4 cryptocurrency world, the price tends to go up.

5 So I don't know if these were actual
6 conversations that they had or if they were just
7 conversations to drive interest and to drive
8 price. I don't know what the -- what was behind
9 it.

10 Q Are you basing your fraud claim on
11 this statement?

12 MR. ENRIGHT: Objection, calls for a
13 legal conclusion. You can answer.

14 THE WITNESS: I mean, it could be
15 construed as that. I don't know what the
16 true point of this was other than to get
17 people to buy the coin.

18 BY MR. FOX:

19 Q When was the statement made,
20 Mr. Fabian?

21 A Looks like April 21st, 2016.

22 Q And when did you first read it?

23 A I don't know the exact date.

24 Q Is it possible it was before April or
25 May 2017?

1 A It's possible.

2 Q Is it possible it was not in or around
3 April 21st, 2016?

4 A That could be possible.

5 Q Let's take a look at 138.

6 MR. ENRIGHT: Peter, are we getting
7 close to a stopping point? It's been an
8 hour and 15 minutes.

9 MR. FOX: We are. If we're thinking
10 we're going to march through every single
11 paragraph in Interrogatory Number 1, we're
12 not going to do that now. But we're going
13 to cover 138.

14 MR. ENRIGHT: Whatever your plans are,
15 that's fine. I just was asking if we're
16 coming up to a point to allow people to
17 stretch their legs, get a drink.

18 MR. FOX: I think about ten minutes.

19 MR. ENRIGHT: Okay.

20 BY MR. FOX:

21 Q Mr. Fabian, do you see Paragraph 138
22 there?

23 A I do.

24 Q I backed it out a little bit so that
25 it's easier to see. But let me know if you want

1 me to zoom in.

2 Can you identify the statement that
3 you contend was a misrepresentation?

4 A Can you zoom in for me?

5 Q Is that better?

6 A It is, yes. Okay.

7 Q Do you see any statements in there
8 that look like misrepresentations to you?

9 A Again, I don't know if there's any
10 misrepresentation. This is just something that
11 looked familiar to me as far as talking about
12 the faucet and the caption that they had to
13 promote the coin.

14 Q Do you see when this statement was
15 made?

16 A March 7th, 2016.

17 Q When did you read this statement?

18 A I don't know the exact date.

19 Q Possible it was before April or May
20 2017?

21 A Possible.

22 Q Possible that it was not in or around
23 March 7th, 2016?

24 A Possible.

25 Q Mr. Fabian, did you ever use the

1 Twitter handle @HulksterCrypto?

2 A I thought it was CryptoHulkster, but
3 it's similar, yes.

4 Q We may have a chance to check that out
5 in a moment.

6 A Okay.

7 Q Did there come a time when someone
8 using the handle @cryptomacho wrote to you "Want
9 a gem? XRB is your answer"?

10 A I would have to see it. I don't know
11 if that was a solicitation or --

12 Q Let's take a look at it. I'm going to
13 introduce another document.

14 A Okay.

15 (Exhibit 4 was marked.)

16 BY MR. FOX:

17 Q Mr. Fabian, I've introduced another
18 document that's been marked as Exhibit Number 4.
19 And I'm going to share that with you right now.

20 Do you see this document and do you
21 see that it's been marked Exhibit Number 4?

22 A I do.

23 Q Okay. I'm going to start at the
24 bottom because I believe that's the way this
25 flows temporally and just scroll up really

1 slowly. And I want you to look at it as I
2 scroll up and then you tell -- I want you to
3 tell me whether you recognize the tweets that
4 are reflected in this document. Okay?

5 A Okay.

6 Q Do you recognize these tweets?

7 A They look vaguely familiar.

8 Q I may have misspoken a moment ago with
9 respect to your Twitter handle. This
10 @HulksterCrypto, is that you?

11 A I believe so. I thought it was the
12 other way around, but that's my picture and my
13 name, yes.

14 Q Does this document refresh your
15 recollection as to whether @cryptomacho wrote
16 you and asked, "Want a gem? XRB is your
17 answer"?

18 A I don't remember if it was directed
19 towards me. I remember seeing stuff like that
20 from different people. I don't remember if that
21 was an actual message to me. I don't remember.

22 Q Do you recall whether you replied to
23 that message?

24 A I can't recall from that point.

25 Q Do you see where I'm toggling -- I

1 don't know if you can see my mouse or not.

2 A Yes.

3 Q Do you see where I'm toggling where it
4 says @HulksterCrypto, and it also says James
5 Fabian, replying to @cryptomacho and it looks
6 like you say, "Where can you buy it? I don't
7 see it on any exchange. Just XRBC."

8 Does that refresh your recollection as
9 to whether you replied to this tweet by
10 cryptomacho?

11 A I see it. I don't even know what XRBC
12 is to be honest. I don't know what that's
13 referencing, "Just XRBC." I don't know what
14 that is.

15 Q Does this look like your reply to
16 cryptomacho's question?

17 A It does.

18 Q Who is @cryptomacho?

19 A Just a -- I guess in cryptocurrency in
20 general, there's just personalities on Twitter
21 that people follow to get information from or to
22 knock ideas with.

23 Q Do you know anything else about him?

24 A I do not.

25 Q Have you ever talked to him outside of

1 Twitter?

2 A I have not.

3 Q Why do you think he wrote to you,
4 "Want a gem? XRB is your answer"?

5 MR. ENRIGHT: Objection, assumes facts
6 not in evidence, misstates the record. You
7 can answer.

8 THE WITNESS: Honestly, I have no
9 idea.

10 BY MR. FOX:

11 Q Why do you think you replied to him,
12 "Where can I (sic) buy it? I don't see it on
13 any exchange. Just XRBC"?

14 A I'm guessing I was interested at that
15 point.

16 Q Interested in what?

17 A In the coin itself, XRB Nano.

18 Q Do you see what date this Twitter
19 exchange occurred on, Mr. Fabian?

20 A It's August 26th, 2017.

21 Q What did cryptomacho write back to you
22 after you wrote, "Where can I (sic) buy it? I
23 don't see it on any exchange"?

24 A It looks like he said yes.

25 Q Did anyone else reply to that question

1 that you asked?

2 A Somebody called Broccolex and they
3 said at CultureCrypto, at Cryptomacho, at
4 BitGrail is the most popular one.

5 Q And then if we scroll up to the next
6 day, it looks like someone named Sphil1608
7 replies to you and writes, "BitGrail and
8 Mercatox."

9 Do you see that?

10 A I do.

11 Q And what did you reply to Sphil1608?

12 A It looks like, "Thanks."

13 MR. ENRIGHT: Objection, the document
14 speaks for itself.

15 MR. FOX: Okay.

16 BY MR. FOX:

17 Q Do you see later in the day on
18 August 27th where you reply to Sphil, "What
19 exchange is it on?"

20 A Yes, I see that.

21 Q What were you referring to by the
22 pronoun "it"?

23 A That would be for XRB.

24 Q Do you see where you write a little
25 bit further up, "Is that XRBC? Reddbytecoin?"

1 A I see that, yes.

2 Q What do you think you meant by that
3 tweet?

4 A I don't remember exactly. But I'm
5 guessing sometimes coins have very similar
6 digits like XRB, XRBC, so it can be confused as
7 to what the actual coin name is. I'm assuming I
8 was clarifying.

9 Q Right. It looks that way; correct?
10 Because Sphil then writes "XRB" in response to
11 you.

12 Do you see that?

13 A Yes.

14 Q And what date did this exchange occur
15 on?

16 A It looks like August 27th, 2017.

17 Q And when did you buy your first XRB?

18 A I believe it was a few days later.

19 Q So it's your testimony that you bought
20 your first XRB a few days after @cryptomacho
21 asked you if you wanted, quote, a gem; is that
22 correct?

23 A On the date, the exact date, I don't
24 know the exact date because I cannot get the
25 paper trail any longer. So that was just based

1 off memory that it was around that time.

2 Q If I told you that you alleged in your
3 complaint you made your first purchase on
4 September 1st, would that sound wrong to you?

5 A I thought it was August 30th, but,
6 yes, around there.

7 Q How many days was that after you asked
8 cryptomacho, "Where can I buy it? I don't see
9 it on any exchange"?

10 A It's about roughly three days.

11 Q That would be about how many months
12 after you testified that you first learned about
13 XRB?

14 A I would guess, what, five months or
15 so.

16 Q Mr. Fabian, is it possible you did not
17 know about XRB until August 26th, 2017 when
18 cryptomacho offered you a gem?

19 A I don't believe so, no.

20 Q Is it possible?

21 A It could be possible.

22 MR. FOX: Okay. Why don't we take a
23 15-minute break, everybody can use the
24 bathroom and stretch their legs.

25 VIDEOGRAPHER: We're going off the

1 record at 12:18 p.m. This is the end of
2 Media 3.

3 (Recess taken.)

4 VIDEOGRAPHER: We are on the record at
5 12:37 p.m. This is the beginning of Media 4
6 in the deposition of James Fabian.

7 BY MR. FOX:

8 Q Okay. Mr. Fabian, just came back from
9 about a 17-minute break and let's get right back
10 into the examination.

11 When did you make your final purchase
12 of XRB on BitGrail?

13 A I don't know the exact date. I think
14 it was a few months after my initial purchase.

15 Q If I told you there are allegations in
16 the complaint and in your declaration that you
17 just signed this week in connection with your
18 lawyers' motion for class certification that you
19 made your final purchase on December 12th, 2017,
20 would you have any reason to doubt that?

21 A That sounds about right.

22 Q And all of the statements that we were
23 just looking at were made before -- were made in
24 2016; correct?

25 A I believe so, yes.

1 Q Fair to say that there are a number of
2 other statements in your response to
3 interrogatory -- strike that.

4 Is it fair to say that there are a
5 number of other statements in paragraphs
6 referenced in your response to Interrogatory
7 Number 1 that were made before December 12th,
8 2017?

9 A I believe so, yes.

10 Q I'm going to represent to you that
11 there are so that we don't have to walk through
12 those additional paragraphs that are referenced
13 in that response to Interrogatory Number 1.

14 MR. FOX: Okay. So I'm going to
15 introduce another exhibit. Bear with me for
16 a moment and then I will share it with you
17 and the rest of the group.

18 MR. ENRIGHT: I'm going to excuse
19 myself. I have a little bit of a postnasal
20 drip from allergies. I apologize if you
21 hear some unpleasant sounds coming from me.
22 I apologize, I can't mute myself by the
23 rules. So I apologize in advance if you
24 hear anything unpleasant coming from me as a
25 result of my allergies.

1 MR. FOX: Okay. Understood. I've
2 introduced this document as Exhibit
3 Number 5.

4 (Exhibit 5 was marked.)

5 BY MR. FOX:

6 Q I'm about to pull it up.

7 Okay. Do you see on your screen,
8 Mr. Fabian, a document that's been marked as
9 Exhibit Number 5?

10 A I do.

11 Q And by its header, it's evident that
12 this is a document that was filed in this case
13 as Document Number 57.

14 Have you ever seen this document
15 before?

16 A I believe I have.

17 Q What is it?

18 A It looks like it's a motion to
19 dismiss.

20 Q Okay. So the title of it is
21 "Reporter's Transcript of Proceedings."

22 A Okay.

23 Q Does that change your testimony?

24 A I don't know the correct legal terms
25 for the document, so if that's what it is, it

1 is.

2 Q Okay. If I told you that it was a
3 transcript of an oral argument that the court
4 had on -- when hearing a motion to dismiss,
5 would you have any reason to doubt that?

6 A No.

7 Q Have you seen this document before?

8 A I'm not sure if I have or not.

9 Q Okay. I'm going to ask you to take a
10 look down at the bottom of Page 28, which I'm
11 scrolling down to right now.

12 A Okay.

13 Q Do you see a reference to a
14 Mr. Carriel there at the bottom of Page 28?

15 A I do.

16 Q Who is Mr. Carriel?

17 A Part of my legal counsel.

18 Q Does he represent you in this action?

19 A He does.

20 Q Do you see where Mr. Carriel says, I'm
21 going to quote here, "Your Honor, I disagree.
22 There are multiple statements that the Nano team
23 made assuring investors that their funds were
24 safe on BitGrail -- promising them that --
25 promising investors and our client that they

1 could trust defendant Firano, the CEO of
2 BitGrail, making statements such as, I speak
3 to -- or I speak to Firano every day. He's a
4 great guy. You can trust him. The funds are
5 safe."

6 Do you see that?

7 A I do.

8 Q Do you see below that where the court
9 says, "But, you know, again, all of these -- and
10 in this regard, it bleeds over into the fraud
11 claim, the misrepresentation claims -- again,
12 everything in the complaint except for one post,
13 which is pretty innocuous -- happened after your
14 client acquired -- I'm not even going to say
15 purchased, but your client acquired the Nano."

16 Do you see that?

17 A I do.

18 Q And do you see where Mr. Carriel says,
19 "Yes, Your Honor"?

20 A I do.

21 Q Was Mr. Carriel wrong to agree with
22 the court that all of the allegedly false or
23 misleading statements that you claim were made
24 were made after you acquired your last XRB on
25 BitGrail?

1 MR. ENRIGHT: Objection, calls for a
2 legal conclusion. You can answer.

3 THE WITNESS: That they were made --
4 I'm sorry, can you repeat the question?

5 BY MR. FOX:

6 Q Was he wrong -- was Mr. Carriel wrong
7 to agree with the court that the only actionable
8 statements in this case were made after your
9 final purchase of XRB on BitGrail?

10 MR. ENRIGHT: Objection, misstates the
11 record, calls for a legal conclusion. You
12 can answer.

13 THE WITNESS: I believe some were --
14 some were after my purchase, I believe.

15 BY MR. FOX:

16 Q It appears that Mr. Carriel was
17 agreeing with the court that all of them were
18 after the purchase.

19 And I'm asking you: Was he wrong to
20 agree with the court on that point?

21 MR. ENRIGHT: Objection, misstates the
22 record, calls for a legal conclusion. The
23 witness can answer.

24 THE WITNESS: I'm not sure if he was
25 wrong or not.

1 BY MR. FOX:

2 Q Are you aware of any
3 misrepresentations that were made before your
4 final purchase of XRB on BitGrail on
5 December 12, 2017?

6 A Am I aware of any that were made
7 before my final purchase?

8 Q Correct.

9 A I believe so, yes.

10 Q What were those?

11 A I don't know offhand.

12 Q Did we see any of them in the
13 paragraph we looked at before with respect to
14 your response to Interrogatory Number 1?

15 A Those were before my final purchase,
16 yes.

17 Q But were they misrepresentations?

18 A The ones that we looked at I don't
19 believe are misrepresentations.

20 Q Are there other ones that -- other
21 statements made before December 12, 2017 that
22 you believe are misrepresentation?

23 A I believe there could be.

24 Q What do you think Mr. Carriel meant
25 when he said, "Yes, Your Honor" in response to

1 that statement by the court?

2 A I'm not sure what he meant.

3 Q All right. Let's go back to the
4 interrogatory responses. I'm going to stop the
5 share here and pull up Exhibit 2. Bear with me
6 for a second.

7 So we're looking at your responses to
8 interrogatories again, Exhibit Number 2.

9 Do you see this document?

10 A I do.

11 Q Let's go back to some more statements
12 that you contend were made by Mr. LeMahieu and
13 were misrepresentations.

14 We talked about a number of them
15 before we had the break, so let's look at some
16 new ones.

17 Number 79, Paragraph 79 is one we
18 haven't looked at before, so let's take a look
19 at the complaint and take a look at that
20 paragraph. I'm going to stop the share and pull
21 up the complaint.

22 Do you see the complaint in front of
23 you?

24 A I do.

25 Q Do you see Paragraph 79?

1 A I do.

2 Q What is the statement in this
3 paragraph that you contend was a
4 misrepresentation?

5 A Can you scroll down a little bit?
6 It's kind of cut off at the very end.

7 Q Is that better?

8 A Yes, it is. Thank you.

9 I don't know of anything that's a
10 misrepresentation in that paragraph.

11 Q Let's take a look at Paragraph 92.
12 I'll blow this up for you so it's easier to
13 read. I'm going to make it smaller so you can
14 read and see the whole text before the
15 screenshot and let me know if you need it
16 bigger.

17 I don't think there's a question
18 pending, which is my fault.

19 So the question is: Do you see --
20 which is the statement or statements in
21 Paragraph 92 that you contend are
22 misrepresentation?

23 A I don't know if there is a
24 misrepresentation on that one.

25 Q Okay. Let's take a look at 109.

1 Okay. Can you identify the statement
2 or statements that you contend were
3 misrepresentations quoted or paraphrased in
4 Paragraph 109? Let me know if you need me to
5 scroll down.

6 A Okay. Can you scroll down just a
7 little bit?

8 Okay. I don't know if there's any
9 misrepresentation in that paragraph.

10 Q Do you see Mr. LeMahieu's name on this
11 post?

12 A That post itself, it just
13 says, "@NANO_Updates."

14 Q Do you have any reason to believe that
15 Mr. LeMahieu has anything to do with the
16 @NANO_Updates handle?

17 A I don't know if he does or not.

18 Q But just to confirm, you refer to this
19 paragraph in your response to Interrogatory
20 Number 1 as an example of a statement made by
21 Mr. LeMahieu that you contend is a
22 misrepresentation; correct?

23 A Correct. I would assume Nano_Updates
24 has -- is ran by the Nano team and Zack
25 Shapiro's name is on there as well.

1 Q Right. But for the record, you don't
2 see anything indicating that Zack Shapiro wrote
3 this tweet, do you?

4 A Not here.

5 Q It looks like it's a tweet about Zack
6 Shapiro; correct?

7 A It's adding or at'ing him, so directed
8 towards him.

9 Q Right. So someone talking was talking
10 to him; correct?

11 A Could be.

12 Q Let's take a look at Paragraph 112.
13 Can you identify the statement in
14 Paragraph 112 that you contend is a
15 misrepresentation?

16 A Can you enlarge it a little bit?

17 Q Sure. Is that better?

18 A Yes, thank you.

19 I don't know if there is a
20 misrepresentation in that tweet.

21 Q Do you see Mr. LeMahieu's name on this
22 post?

23 A I do not.

24 Q Whose handle do you see on this post?

25 A It looks like nanocurrency is the one

1 tweeting it.

2 Q Is that different than the handle we
3 just looked at in the previous paragraph?

4 A I can't recall if it was different. I
5 think it was the same.

6 Q This was Paragraph 109. Let's go back
7 and take a look.

8 What handle do you see at Paragraph
9 109?

10 A That's @NANO_Update, so it's
11 different.

12 Q Okay. Do you have any reason to
13 believe that Colin LeMahieu had anything to do
14 with this handle?

15 A I don't know if he did.

16 Q Let's take a look at Paragraph 113.
17 This is wider, so I'm going to zoom out a little
18 bit.

19 Can you identify the statement or
20 statements in this paragraph that you contend
21 are misrepresentations?

22 MR. ENRIGHT: I'm going to object that
23 this calls for a legal conclusion. The
24 witness can answer.

25 THE WITNESS: I don't know if there is

1 a misrepresentation on that sheet.

2 BY MR. FOX:

3 Q Do you see Mr. LeMahieu's name
4 connected to any of these statements?

5 A I don't believe so, no.

6 Q Do you see a handle or some sort of
7 identifying mark on this screenshot?

8 A I don't believe so. There is
9 something in the very bottom right-hand corner,
10 something --

11 Q I'll blow it up.
12 I blew it up too much, now we can't
13 see it. There.

14 A /u/ihateaccounts90, I don't know what
15 that is.

16 Q Do you have any reason to believe that
17 Mr. LeMahieu has anything to do with
18 /u/ihateaccounts90?

19 A I have no idea.

20 Q Let's take a look at 114.

21 Can you identify the statement or
22 statements in 114 that you contend are
23 misrepresentations?

24 I'll back it out a little bit so you
25 can see the whole thing.

1 A Okay.

2 I don't know if anything is
3 misrepresented on that one.

4 Q Looking just at the tweet from
5 @nanocurrency, do you see Mr. LeMahieu's name on
6 this post?

7 A That one, no.

8 Q And you testified a moment ago that
9 you don't have any basis to believe that
10 Mr. LeMahieu is connected to the @nanocurrency
11 account; is that correct?

12 MR. ENRIGHT: Objection, misstates the
13 record. You can answer.

14 MR. FOX: I'll rephrase the question.

15 Q Do you have any basis to believe that
16 Mr. LeMahieu was connected to the @nanocurrency
17 account?

18 A I'm not sure if he is.

19 Q Let's go to 121. And actually, to go
20 back to that previous question, is it your
21 testimony that you have -- that you do not have
22 a basis to believe that Mr. LeMahieu was
23 connected to that account I just referenced?

24 MR. ENRIGHT: Objection, misstates the
25 prior testimony. You can answer.

1 THE WITNESS: I don't know if he has a
2 connection or not.

3 BY MR. FOX:

4 Q Do you have a basis to believe he
5 does?

6 A I do not.

7 Q Do you have a basis to believe that
8 he's connected to the /u/ihateaccounts90
9 account?

10 A I don't know if he's attached to that
11 or not.

12 Q Do you have a basis to believe that he
13 is?

14 A I do not.

15 Q Do you have a basis to believe that
16 Mr. LeMahieu is in any way affiliated with the
17 @NANO_Updates account?

18 A I don't know.

19 Q Do you have a basis to believe that he
20 is?

21 A I do not.

22 Q Let's take a look at 121. Just let me
23 know -- there's language quoted in the text, but
24 also let me know if you would like me to blow up
25 the screenshot.

1 Once again, I would like you to
2 identify the statement or statements in
3 Paragraph 121 that you contend are
4 misrepresentations.

5 A Okay. Could you blow up the
6 screenshot now?

7 Q Sure.

8 A I don't know if there's any
9 misrepresentation in that screenshot or
10 paragraph.

11 Q I'm going to shrink this down again.
12 Let's take a look at 124.

13 Same question, can you identify the
14 statement or statements in Paragraph 124 that
15 you contend are misrepresentations? Again, let
16 me know when you need me to blow up the
17 screenshot.

18 A Yes, you can blow it up.

19 I don't know if there's anything
20 misrepresented in that.

21 Q Let's take a look at 127. Make it
22 smaller so we can see the whole thing.

23 Can you identify the statement or
24 statements contained in Paragraph 127 that you
25 contend contain -- than you contend are

1 misrepresentations?

2 MR. ENRIGHT: I'm going to object to
3 the form of the question, calls for a legal
4 conclusion.

5 BY MR. FOX:

6 Q I'll rephrase it.

7 Do you see any statements in
8 Paragraph 127 that you believe are untrue,
9 Mr. Fabian?

10 A I don't know if any of those are
11 untrue or not.

12 Q Do you have any basis to believe that
13 they are untrue?

14 A I do not.

15 Q Let's take a look at 131.

16 Would you identify any statement or
17 statements that you contend are untrue or
18 misleading?

19 A I don't know if anything was
20 misrepresented in that paragraph.

21 Q You know, I apologize, I don't think
22 there even were any statements in that
23 paragraph, there is a screenshot below it.

24 Can you take a look -- please take a
25 look at the screenshot as well and tell me if

1 you see any statements that you believe are
2 untrue or misleading.

3 A I don't know if that's untrue or
4 misleading.

5 Q Do you have any basis to believe that
6 it's untrue or misleading?

7 A I don't.

8 Q Do you see Mr. LeMahieu's name on this
9 post?

10 A This one, no, just Zack Shapiro.

11 Q Right. But for the record, you refer
12 to this paragraph in your response to
13 Interrogatory Number 1 as a paragraph containing
14 a challenged statement made by Mr. LeMahieu;
15 correct?

16 A I believe so.

17 Q All right. Let's go to 139. And
18 again, take a look at the text first and let me
19 know when you need me to blow up the screenshot.

20 I would like you to identify any
21 statement or statements in Paragraph 139 that
22 you believe are untrue or misleading.

23 A Can you blow it up? There is that
24 pop-up print screen that's kind of blocking.

25 Q Are you seeing that?

1 A Yes.

2 Q I'll scroll around. Is that better?

3 A It is, yes. Thank you.

4 I don't know if there's any
5 misrepresentation in this one.

6 Q Let's go to 141. I'm going to shrink
7 this down so we can see it.

8 Do you see any statements in
9 Paragraph 141 that you contend were untrue or
10 misleading when they were made?

11 A Can you enlarge the screenshot?

12 I don't see any misrepresentation on
13 that one.

14 Q Let's go to 144. We'll shrink this
15 down so we can see it all.

16 Do you see any statement here that you
17 contend was untrue or misleading when it was
18 made?

19 A I don't know if any of that was
20 untrue.

21 Q When was this statement made?

22 A April 9th, 2018.

23 Q When did the BitGrail exchange close?

24 A I believe that was February of 2018.

25 Q Does this statement have anything to

1 do with any investment decision you made with
2 respect to BitGrail?

3 A I don't believe it has anything to do
4 with my specific transaction.

5 Q Fair to say it couldn't have anything
6 to do with yours or anyone else's specific
7 transaction since BitGrail was already closed
8 when the statement was made?

9 A Yes. I don't know.

10 Q Would that be fair to say?

11 A I believe so.

12 Q Let's take a look at 154. Can you
13 identify any statements or statements that you
14 contend were untrue or misleading when they were
15 made?

16 A I don't know if there's any
17 misrepresentation on 154.

18 Q In 154, who made the statement that's
19 alleged in that paragraph?

20 A I don't believe it says.

21 Q Looking at the first sentence where it
22 says, "In early" --

23 A BitGrail. It says, "BitGrail
24 announced."

25 Q So fair to say these are statements

1 that are alleged to have been made by BitGrail?

2 A Yes, safe to assume.

3 Q Fair to say this is not a statement
4 made by Mr. LeMahieu?

5 MR. ENRIGHT: Objection, calls for a
6 legal conclusion.

7 THE WITNESS: I'm not sure.

8 BY MR. FOX:

9 Q Do you see Mr. LeMahieu's name in this
10 paragraph?

11 A I do not.

12 Q Take a look at 164. All right. Can
13 you identify any statement in this paragraph?

14 A The question is can I identify a
15 statement?

16 Q Yes. Do you see a statement alleged
17 in this paragraph?

18 A It's just saying that "the Nano
19 Defendants issued countless statements falsely
20 or negligently assuring Plaintiff and the Class
21 that their funds were safe on the BitGrail
22 Exchange."

23 Q Do you see any specific statement
24 quoted in this paragraph?

25 A No, I don't.

1 Q Do you see any specific statement
2 paraphrased in this paragraph?

3 A No.

4 Q But you referred to this paragraph as
5 including a challenged statement made by
6 Mr. LeMahieu in your interrogatory statements,
7 did you not?

8 A I'm not sure who made this statement.

9 Q That was not the question, though,
10 Mr. Fabian.

11 Your interrogatory responses to
12 Interrogatory Number 1 refer to this paragraph
13 as an example of a paragraph including a false
14 or misleading statement made by Mr. LeMahieu;
15 isn't that correct?

16 A Off the top of my head, I can't
17 remember if that was part of that or not.

18 Q If I represented to you that you did
19 refer to Paragraph 164 in your response to
20 Interrogatory Number 1 under the subheading for
21 Mr. LeMahieu, would you have any reason to doubt
22 that?

23 A No, none.

24 Q Do you still maintain that your
25 interrogatory responses are true and correct to

1 the best of your belief?

2 A I do.

3 Q Let's take a look at Paragraph 188.

4 Do you see where it says, "In further
5 reliance on the social media representations he
6 had read from Defendant LeMahieu, Defendant
7 Shapiro, and other people related to XRB -- and
8 in reliance on the representations he had read
9 about the safety and security of both the Nano
10 Protocol and the BitGrail exchange -- Plaintiff
11 Fabian turned to BitGrail as an exchange where
12 he would purchase and stake his XRB."

13 Do you see that?

14 A I do.

15 Q Is that true?

16 A It is.

17 Q When did you decide to turn to
18 BitGrail to purchase and stake your XRB?

19 A Again, I believe that was around
20 August 30th, I think it's 2017. Somewhere
21 around there.

22 Q What specific statements about the
23 safety of the BitGrail exchange had you read and
24 relied upon at this time?

25 A I'm not sure without doing more

1 research.

2 Q You testified earlier that you believe
3 you learned about the BitGrail exchange shortly
4 before you opened an account, did you not?

5 A Correct.

6 Q So what statements by Defendant
7 LeMahieu or Defendant Shapiro did you read and
8 rely upon after you learned about the BitGrail
9 exchange and before you turned to the exchange?

10 A I'm not sure.

11 Q It would have needed to have been in a
12 relatively small window. Is that fair to say?

13 A Not necessarily.

14 Q So is it your testimony that you read
15 and relied upon statements about the safety and
16 security of the BitGrail exchange before you
17 learned about the BitGrail exchange, Mr. Fabian?

18 A No.

19 Q So is it fair to say you only could
20 have read and relied upon statements about the
21 BitGrail exchange after you learned the BitGrail
22 exchange existed; correct?

23 A I'm not sure of the exact timing of
24 when I knew it existed.

25 Q You testified earlier that you believe

1 you learned it existed in August 2017, did you
2 not?

3 A Correct.

4 This one -- I don't believe this
5 says -- has a date on it. So I don't know.

6 Q Yeah, I'm -- strike that.

7 What specific statements about the
8 safety of the Nano protocol did you read and
9 rely upon before you turned to the BitGrail
10 exchange?

11 A I'm not sure.

12 Q Do you think any of these statements
13 would have been alleged in the complaint?

14 A Could have been, yes.

15 Q Were any of the statements that we
16 just looked at the statements that you're
17 referring to here?

18 MR. ENRIGHT: Objection, incomplete
19 hypothetical.

20 THE WITNESS: They could be.

21 BY MR. FOX:

22 Q But is it your testimony that you
23 don't, sitting here today, recall which
24 statements you read and relied upon before
25 opening -- before, quote/unquote, turning to

1 BitGrail about -- strike that.

2 Is it your testimony that you don't
3 recall which specific statements about the
4 safety of the Nano protocol you read and relied
5 upon before turning to BitGrail?

6 A Correct. There was a lot of
7 statements. I don't know specifically all of
8 them.

9 Q So it's your testimony that you read
10 statements about the safety of the Nano
11 protocol; is that correct?

12 A Correct.

13 Q It's your testimony you relied on
14 these statements before deciding to,
15 quote/unquote, turn to BitGrail; is that
16 correct?

17 A Correct.

18 Q But it's your testimony you can't
19 remember what these statements were; is that
20 correct?

21 A Correct.

22 Q And it's your testimony you can't
23 remember what these statements were even though
24 some of these statements might be in the
25 complaint; is that correct?

1 A I mean, the statements, if they are in
2 here, I relied on those. I don't know if there
3 was additional. Again, it was three or four
4 years ago, so it's tough to recall.

5 Q Is it fair to say that every statement
6 we looked at so far today did not include any
7 misrepresentation?

8 A Correct.

9 Q Let's take a look at Paragraph 194.
10 Do you see where it says, "In deciding
11 to invest in XRB, open an account at BitGrail,
12 and stake his investment holdings there,
13 Plaintiff Fabian reviewed and relied upon the
14 Nano Defendants' promotions on social media
15 channels and/or statements made on the Nano
16 Defendants' own website representing that
17 BitGrail is" safe and reliable -- excuse me,
18 "representing that BitGrail is a safe and
19 reliable exchange on which to purchase and stake
20 XRB."

21 Do you see that?

22 A I do.

23 Q Is that true?

24 A It is.

25 Q When did you decide to open an account

1 on BitGrail?

2 A Again, I think it was in August.

3 Q And what specific promotions on social
4 media channels representing that BitGrail is a
5 safe and reliable exchange had have you read and
6 relied upon at this time?

7 A I'm sorry, which mediums?

8 Q No, which statements. Which
9 statements on social media channels had you read
10 and relied upon at the time you opened the
11 account?

12 A I don't know. I don't have the
13 statements memorized.

14 Q Is it fair to say that these
15 statements were made after you learned about the
16 existence of BitGrail?

17 A I don't know.

18 Q Is it possible that you read a
19 statement about the safety and security of
20 BitGrail before you learned -- knew of the
21 existence of BitGrail?

22 A I suppose not.

23 Q What, quote/unquote, statements on
24 defendants' own website about BitGrail's safety
25 and security had you read and relied upon before

1 opening an account with BitGrail?

2 A I'm not sure of the exact statements.

3 Q It possible that these statements are
4 in the complaint?

5 A Possible.

6 Q Could they be any of the ones that we
7 looked at?

8 A I can't remember.

9 Q If I represented to you that we didn't
10 look at any statement that came from defendants'
11 own website, would that sound wrong to you?

12 A I would assume that's correct.

13 Q So is it your testimony that you read
14 statements about Nano's website about the safety
15 and security of BitGrail's exchange?

16 A Correct.

17 Q Is it your testimony that you relied
18 on these statements in deciding to open an
19 account and stake your investments there?

20 A Correct.

21 Q But it's your testimony that you can't
22 remember what these statements are; is that
23 correct?

24 A Correct.

25 MR. ENRIGHT: Counsel, how many times

1 are you going to rephrase these same steps?
2 You've gone over the same ground half a
3 dozen times. You're getting the same answer
4 over and over again.

5 BY MR. FOX:

6 Q Mr. Fabian, your answer is the same
7 even if some of these complaints are in the
8 complaint?

9 A I'm sorry, can you repeat that?

10 Q Your answer is you don't remember the
11 specific statements on the Nano website vouching
12 for the safety and security of the BitGrail
13 exchange is the same even if some of these
14 statements are in the complaint. Is that your
15 testimony?

16 MR. ENRIGHT: Objection, asked and
17 answered.

18 THE WITNESS: Sorry, you're starting
19 to really confuse me at this point. If it's
20 in the statement, then yes.

21 BY MR. FOX:

22 Q Let's me rephrase the question.
23 You testified that you read statements
24 on the Nano website of the safety and security
25 of the BitGrail exchange before you opened an

1 account; correct?

2 A Correct.

3 Q And you testified that you relied on
4 these statements in deciding to open an account;
5 correct?

6 A Correct.

7 Q And you also testified that you can't,
8 sitting here today, remember what these
9 statements were; is that correct?

10 A Correct.

11 Q And you testified that you think but
12 you don't know whether these statements are in
13 the complaint; is that correct?

14 A Correct.

15 Q Would you like to look through the
16 complaint and see if you can identify any
17 statements from the Nano website concerning
18 safety and security of the BitGrail exchange?

19 MR. ENRIGHT: Objection, the document
20 speaks for itself.

21 BY MR. FOX:

22 Q If I represented to you, Mr. Fabian,
23 that there are no such statements in any
24 complaint, would you have any reason to doubt
25 that?

1 A I don't believe so.

2 Q Why don't we switch gears. Let's go
3 back up to Paragraph 186 of the complaint.

4 Do you see where it says, "On or about
5 August 16th, 2017 Plaintiff Fabian purchased
6 1.62457112 Bitcoin (BTC) on Coinbase's website,"
7 there is a link, "using a credit card." The
8 total price was \$7,000 -- sorry, strike that.

9 "The total price was \$7,104.30 with
10 each Bitcoin worth \$4,308.83."

11 Do you see that?

12 A I do.

13 Q Is that true?

14 A I believe so, yes.

15 Q Do you have any records of this
16 transaction?

17 A Yes, there's records that were
18 submitted from the Coinbase account.

19 Q Okay. Did you produce those in this
20 litigation?

21 A I believe they should be there.

22 MR. FOX: I'm going to introduce
23 another exhibit. So I'm going to stop the
24 share and pull something else up.

25 (Exhibit 6 was marked.)

1 BY MR. FOX:

2 Q Okay. Mr. Fabian, I have introduced a
3 new document labeled Exhibit 6. It should be on
4 your screen right now.

5 Can you see it?

6 A I do, yes.

7 Q Okay. Have you seen this document
8 before?

9 A I believe so, yes.

10 Q What is it?

11 A This is a transaction buying Bitcoin I
12 believe on -- what is it called -- Coinbase.

13 Q Okay. How did you access this or
14 where was -- strike that.

15 Did this document come from you?

16 A Yes.

17 MR. FOX: For the record, while
18 unfortunately the exhibit share has put the
19 sticker right over the Bates stamp, but I
20 want to read into the record the fact that
21 this document bears the Bates stamp
22 L&K00873.

23 Q Mr. Fabian, where did you get this
24 document from?

25 A I believe this was a screenshot from

1 my Coinbase account.

2 Q Does the reflect the transaction
3 reflected in Paragraph 186 of the complaint?

4 A I believe so.

5 Q Do you have any other records of this
6 transaction?

7 A No, the BitGrail website has now shut
8 down, so I could not go in there to get exact
9 numbers from there or dates.

10 Q Right. To be clear, this isn't a
11 transaction on BitGrail, is it, Mr. Fabian?

12 A This is not.

13 Q Do you see your name on this anywhere?

14 A That one, no.

15 Q Do you have any other records of the
16 purchase of this Bitcoin that do have your name
17 on it?

18 A Well, it would be in my account, so
19 yes.

20 MR. FOX: I'm going to call for the
21 production of those records. Any documents
22 reflecting the purchase of this Bitcoin on
23 August 16th that have Mr. Fabian's name on
24 it.

25 Q Mr. Fabian, where did you store the

1 Bitcoin once you bought it on Coinbase?

2 A It stayed on there until I sent it to
3 BitGrail.

4 Q Where is "there"?

5 A On Coinbase.

6 Q Do you have an address for that
7 wallet?

8 A I'm sure I do. Not off the top of my
9 head, but I'm sure there is one in my account.

10 MR. FOX: We're going to call for the
11 production of a document reflecting an
12 address for that Coinbase wallet.

13 Q Let's go -- I'm going to stop the
14 share and let's go back to the complaint.

15 Let's go to Paragraph 187. I wish
16 there was a better way to get down in this
17 document than having to scroll every single
18 time.

19 Mr. Fabian, do you see the complaint
20 in front of you here?

21 A I do.

22 Q Do you see Paragraph 187 where it
23 says, "On August 22nd, 2017, Plaintiff Fabian
24 transferred his entire 1.62457112 BTC to
25 Bittrex," B-I-T-T-R-E-X, "a cryptocurrency

1 exchange"?

2 A Yes.

3 Q Is that true?

4 A If it's in there, I assume so. It
5 could have been that I needed to send it to
6 Bittrex first before I sent it to someone else.
7 But I can't remember exactly.

8 Q Is the allegation in Paragraph 187
9 true?

10 A I believe so.

11 Q Do you have any records of that
12 transaction?

13 A I'm sure in my Bittrex account.

14 Q Did you produce those in this
15 litigation?

16 A I can't remember. I know I did for
17 Coinbase. I can't remember for Bittrex or not.
18 I think I did.

19 Q If I represented to you that we don't
20 have any documents reflecting this transaction
21 on Bittrex, would you have any reason to doubt
22 that?

23 A No.

24 MR. FOX: I'm going to call for the
25 production of the Bittrex records reflecting

1 this transaction.

2 Okay. I'm going to introduce another
3 document so I'll stop the share and we'll
4 switch it around. Hold on one second.

5 Okay. I've introduced another
6 document, Mr. Fabian. This one is listed as
7 Exhibit Number 7.

8 (Exhibit 7 was marked.)

9 BY MR. FOX:

10 Q Do you see that document before you?

11 A I do.

12 Q And I'm going to represent for the
13 record that this document bears the Bates stamp
14 L&K_00872, indicating that it was produced in
15 this case by your counsel.

16 Have you ever seen this document
17 before, Mr. Fabian?

18 A I believe so, yes.

19 Q What is it?

20 A Again, looks like a screenshot from
21 purchasing -- no, sending Bitcoin.

22 Q Okay. Where did you get the document
23 from?

24 A I believe this is a screenshot.

25 Q And what's it a screenshot of?

1 A This is the -- from I believe Coinbase
2 screenshot sending Bitcoin.

3 Q And where were you sending the Bitcoin
4 for this transaction to the extent that you can
5 remember?

6 A This one, I'm not 100 percent sure.
7 Either to another exchange, possibly BitGrail.

8 Q Okay. Do you have a date on this? It
9 says August 22nd?

10 A Yes.

11 Q Does it strike you as likely you would
12 have sent the Bitcoin do BitGrail on
13 August 22nd?

14 A Somewhere around there.

15 Q If I told you that you alleged in the
16 complaint that you sent the Bitcoin to BitGrail
17 later than August 22nd, would you have any
18 reason to disagree with that?

19 A No.

20 Q Does this document have your name on
21 it anywhere?

22 A I don't believe so.

23 Q Do you have any records related to the
24 transaction alleged in Paragraph 187 that
25 haven't been produced in this case and that we

1 haven't just talked about?

2 A I don't believe so. It should have
3 been produced.

4 Q So that would include the Bittrex
5 account, that would have shown the receipt of
6 this Bitcoin; is that correct?

7 A Again, I think we did the Bittrex, but
8 I'm not 100 percent sure.

9 MR. FOX: Okay. I'm going to
10 reiterate the call for production of the
11 Bittrex account connected to this alleged
12 transaction.

13 Q Mr. Fabian, do you have access to
14 records from Coinbase that have your name on
15 them?

16 A I mean, I have the account to log
17 into, yes.

18 Q Okay. And would that include the
19 transactions on Coinbase that are alleged in
20 Paragraphs 186 and 187 of the complaint?

21 A It should include all of my
22 transactions.

23 MR. FOX: I'm going to call for
24 production of documents from the Coinbase
25 account that have Mr. Fabian's name on them

1 as well as information pertaining to the
2 transactions alleged in Paragraphs 186 and
3 187 of the complaint.

4 Q Let's go back to the complaint. I'm
5 going to take you down to Paragraph 189. I want
6 to say renders.

7 Do you see Paragraph 189 there,
8 Mr. Fabian?

9 A Yes.

10 Q Why don't you take a look at it while
11 I attach a charger to my laptop so I don't
12 become disconnected from you in the middle of
13 this deposition.

14 Okay. Do you see in Paragraph 189
15 where it says, "On August 31, 2017, Plaintiff
16 Fabian opened an account on BitGrail and
17 transferred .66971933 BTC from his Bittrex
18 account Bitcoin wallet to BitGrail. At the
19 time, the .66971933 BTC had a value of
20 approximately \$3,220."

21 Do you see that?

22 A I do.

23 Q Is that true?

24 A I believe so.

25 Q Do you have any records of this

1 transaction?

2 A This would be in -- yes, there should
3 be records in Coinbase and Bittrex of it.

4 Q Why would there be records of it in
5 Coinbase?

6 A Well, Coinbase sending it to Bittrex.
7 Bittrex sending it to BitGrail.

8 Q Okay. It looks like from
9 Paragraph 189 like the allegation here is just
10 connected to the transfer from Bittrex to
11 BitGrail.

12 A Yes.

13 MR. ENRIGHT: Objection, vague.

14 THE WITNESS: It should be in Bittrex
15 then.

16 BY MR. FOX:

17 Q It should be in Bittrex?

18 A Yes.

19 Q Okay. Did you produce those records
20 in this litigation?

21 A Again, I believe I did but not
22 100 percent sure.

23 Q Okay. Let's take a look at another
24 document.

25 It's loading, Mr. Fabian. I've put up

1 a document that has been introduced and marked
2 as Exhibit 8.

3 (Exhibit 8 was marked.)

4 BY MR. FOX:

5 Q Do you recognize this document?

6 A Yes, I believe it's one of my
7 transactions.

8 Q Where -- did you provide this document
9 to counsel to be produced in this case?

10 A I believe I did.

11 Q How did you access it?

12 A Logging into my Bittrex account.

13 Q Do you know if it reflects the
14 transaction that's alleged in Paragraph 187?

15 A The timing of it looks to be and the
16 amount.

17 Q Okay. Does it say Bittrex anywhere on
18 it?

19 A Up at the top, yes.

20 Q I think that's the file name that
21 we've given it.

22 A Okay.

23 Q Which it tells you what we think about
24 it. But do you see the word "Bittrex" anywhere
25 on the document itself?

1 A No.

2 Q Okay. Do you see the word "BitGrail"
3 anywhere on the file itself?

4 A No.

5 Q Does this document have your name on
6 it?

7 A My name, no.

8 Q Do you have any records of the
9 transaction that's alleged in Paragraph 189
10 other than this?

11 A Well, going into the actual account,
12 yes.

13 Q Would those records have your name on
14 them?

15 A The account would, yes.

16 MR. FOX: I'm going to call for the
17 production of the additional records on the
18 Bittrex account that reflect the transaction
19 alleged in Paragraph 189 and include
20 Mr. Fabian's name.

21 Q Would there be any records on your
22 Bittrex account that include BitGrail's name,
23 Mr. Fabian?

24 A I don't know, to be honest. Most of
25 the time it's just IDs like you see there

1 that -- a bunch of strings, that's how you
2 identify where it went. I don't think it would
3 say an actual name.

4 Q Okay. Would you just double check
5 that for us?

6 A Would I right now on this screenshot?

7 Q No, after the deposition.

8 A Oh, yes.

9 Q Do you have any records reflecting the
10 fact that you opened a BitGrail account on
11 August 31st, 2017?

12 A I don't believe so.

13 Q Did you ever receive a confirmation
14 email from BitGrail after you opened that
15 account?

16 A Gosh. I believe -- I can't remember
17 100 percent, but there are might be.

18 Q Would you still have access to that
19 email?

20 A I should, yes.

21 MR. FOX: I'm going to call for the
22 production of any emails from BitGrail to
23 Mr. Fabian. I also want to note that this
24 was clearly called for in our Document
25 Request Number 3.

1 MR. ENRIGHT: I just want to say that
2 there's no way of knowing that this existed
3 at all at this time. I believe Mr. Fabian
4 searched for documents in his email relating
5 to BitGrail. If it turned up, it would have
6 been produced.

7 MR. FOX: Okay. Noted.

8 Q Let's go back to the complaint.
9 Mr. Fabian, do you see the complaint
10 again?

11 A I do.

12 Q I'm going to Paragraph 191. And I
13 apologize, again, that there's not a faster way
14 to move in this interface to the paragraphs that
15 we want to look at than just having me scroll
16 down. On the other hand, I guess it's me who
17 has to deal with the carpal tunnel syndrome that
18 results from it.

19 Do you see in Paragraph 191 where it
20 says, "On September 1st, 2017, the .66971933 BTC
21 became available on BitGrail and Plaintiff
22 Fabian used the entire sum to purchase
23 approximately 21,143 XRB"?

24 A I see that.

25 Q Is that true?

1 A I think the number of XRB might be off
2 because the 21,143, that's the total amount that
3 I had at its highest. The initial purchase was
4 not for the full 21,143 because I did make -- I
5 believe if not one or another purchase. Again,
6 like in December, maybe even before that.

7 Q All right. Is this something you
8 would have alerted your counsel to when you
9 reviewed the amended complaints?

10 A Yes, I probably missed it thinking
11 that the whole thing was on that one
12 transaction. I just probably thought it was the
13 whole amount I owned.

14 Q Okay. Do you have any records of this
15 transaction?

16 A Not -- again, not from BitGrail, but
17 it should be on, you know, one of the other
18 exchanges, Bittrex or Coinbase sending it over.

19 Q Right. So do you remember from which
20 account you sent over that Bitcoin?

21 A I think it was Bittrex.

22 Q Okay. Would you still have access to
23 those records on your Bittrex account reflecting
24 this transfer?

25 A I would.

1 Q You know what, I apologize,
2 Mr. Fabian, I think we already talked about that
3 transfer.

4 The question here is: Do you have any
5 records of your purchase of XRB on BitGrail?

6 A Again, I don't believe so since I
7 don't have access to BitGrail any longer.

8 Q Okay. Would you have received an
9 email from BitGrail confirming that purchase?

10 A I do not know. I don't recall getting
11 one.

12 MR. FOX: I'm going to call for the
13 production of any emails from BitGrail
14 reflecting the purchase of any XRB,
15 including on this date.

16 Q Okay. Let's go down to 192.

17 Do you see, Mr. Fabian, where it says,
18 "On December 12, 2017, Plaintiff Fabian
19 transferred \$2,850 to BitGrail to purchase
20 another 2,000 XRB"?

21 A I do.

22 Q Okay. Is that true?

23 A I believe so.

24 Q Do you have any records of this
25 transaction?

1 A Again, it should be in the Bittrex if
2 it was transferred from there.

3 Q Do you know if this \$2,850 was
4 transferred from Bittrex?

5 A I believe it was.

6 Q Was that in U.S. dollars?

7 A It was probably done in Bitcoin.

8 Q Do you see any reference in this
9 allegation in Paragraph 192 to Bitcoin?

10 A No.

11 Q Do you think that Paragraph 192 might
12 not be fully accurate with respect to this
13 transaction?

14 MR. ENRIGHT: Objection, misstates the
15 record and misrepresents the document.

16 THE WITNESS: I believe it was meant
17 to show the value of the Bitcoin, I believe.

18 BY MR. FOX:

19 Q So it's your testimony that you
20 transferred Bitcoin worth \$2,850 to BitGrail on
21 December 12th; is that correct?

22 MR. ENRIGHT: Objection, misstates the
23 prior testimony. You can answer.

24 THE WITNESS: It could have been
25 either to tell you from my memory. I

1 believe -- I'm not 100 percent sure -- that
2 you can send the equivalent of cash as well
3 or Bitcoin. But I don't remember which one
4 I did. I would assume I did Bitcoin, but I
5 believe you have the option of doing cash as
6 well, which they call USD.

7 BY MR. FOX:

8 Q Okay. And if I told you that, in
9 fact, BitGrail did not accept Fiat currency,
10 would you have any reason to doubt that?

11 A No.

12 Q Any idea what account you might have
13 sent this \$2,850 worth of Bitcoin to BitGrail
14 from?

15 A It was going to be Coinbase or
16 Bittrex, I believe.

17 MR. FOX: All right. I'm going to
18 call for the production of any records in
19 Mr. Fabian's Coinbase or Bittrex account
20 reflecting any transfers of Bitcoin to
21 BitGrail, including any that happened on
22 December 12th, 2017.

23 Q Let's go on to Paragraph 193.

24 Do you see where it says -- oh, excuse
25 me. We were already there. No, strike that.

1 We were not.

2 Let's look at Paragraph 193.

3 Do you see where it says, "As of
4 December 12th, 2017, Plaintiff Fabian purchased
5 and held on BitGrail 23,143 XRB with a total
6 purchase price of \$6,070"?

7 A I see that.

8 Q And is that true?

9 A I believe so.

10 Q And do you have any records reflecting
11 that this was your account balance as of
12 December 12th, 2017?

13 A I do have screenshots that were
14 submitted of the BitGrail account showing that
15 amount. I don't know if there was a time
16 anywhere in that, though.

17 Q Okay. I think we're going to take a
18 look at those in a minute. I won't ask any
19 questions about it until the document is in
20 front of me.

21 But do you have any other documents
22 other than those screenshots reflecting what
23 your account balance was on December 12?

24 A Not that I know of.

25 Q Go ahead.

1 A No, I don't think there was anything
2 like that that I know of.

3 Q Would you double check for us after
4 the deposition is over?

5 A Absolutely.

6 Q All right. Let's take a look at
7 Paragraph 195.

8 And do you see where it says, "Shortly
9 before Plaintiff Fabian lost control of his
10 23,143 XRB on BitGrail, he transferred 110 XRB
11 to a separate XRB wallet off of BitGrail.
12 Therefore, he owned and held a total of 23,033
13 XRB in his BitGrail wallet"?

14 A I see that.

15 Q Okay. Is that true?

16 A I believe so, yes.

17 Q To whom did you transfer the 110 XRB?

18 A To the XRB wallet.

19 Q What is the XRB wallet?

20 A It's -- a wallet I guess is a
21 cryptocurrency bank almost where you can store
22 your coins and there was one made specifically
23 for XRB.

24 Q And would you have an account within
25 that wallet?

1 A Yes. You set up your own -- well, you
2 have an ID, I believe. It's been a long time
3 since I when into it, but I think there is an
4 ID.

5 Q Do you know whether it's all one
6 wallet or whether it was a separate wallet just
7 for you?

8 A No, I believe it's just a separate
9 wallet for myself.

10 Q Do you have an address for that
11 wallet?

12 A I should, yes.

13 MR. FOX: All right. I'm going to
14 call for production of documents reflecting
15 the address of that wallet.

16 Q Do you have any records reflecting the
17 transfer of the 110 XRB from BitGrail to that
18 wallet?

19 A I do not know what that wallet shows
20 to tell you the truth. I don't -- it could
21 show -- I don't know if it shows a date or time
22 on that or not or if it just shows number of
23 coins there.

24 Q And any other records, maybe records
25 from BitGrail?

1 A Not that I know of, no.

2 Q Did you receive any email confirmation
3 of a withdrawal of XRB from BitGrail?

4 A I don't recall them sending
5 confirmation emails like that.

6 Q If I told you that they did, would you
7 have any reason to doubt that?

8 A No.

9 MR. FOX: I'm going to call for the
10 production of any emails from BitGrail
11 concerning the withdrawal of XRB including
12 any that -- any emails that were sent in
13 connection with the transaction that's
14 alleged in Paragraph 195.

15 MR. ENRIGHT: Peter, just addressing
16 these BitGrail emails that you've been
17 asking about, I just want to ask this before
18 I forget. If there are any search terms
19 that you believe would be helpful in
20 locating those that were not obvious in
21 terms of our efforts to locate responsive
22 documents, we'll be happy to follow up on
23 those search terms because I know that
24 Mr. Fabian searched his email for BitGrail
25 and this did not turn up.

1 MR. FOX: Okay. We'll take a look and
2 get back to you. I believe the emails I've
3 seen do say BitGrail on them, but I'll
4 double check and see if there are any other
5 search terms that can help.

6 Q Okay. Where were we?

7 Mr. Fabian, you testified a moment ago
8 that you do have records that you had an account
9 at BitGrail in the form of certain screenshots;
10 is that correct?

11 A Correct.

12 Q And did you produce those screenshots
13 in this litigation?

14 A I did.

15 Q And can you just describe them broadly
16 for us right now, please?

17 A Yes. I think there is a screenshot
18 that showed different coins in it and how much
19 you held in each one. And then I think it had
20 BitGrail at the top of it and it showed any
21 coins.

22 Q I'm going to introduce some documents
23 here. So I'm going to stop the share and we'll
24 introduce documents and take a look at those.

25 MR. ENRIGHT: Peter, we've been going

1 now for nearly four hours. Do you think
2 this would be -- while you line up your
3 documents, do you think this would be a fair
4 time to take a short break?

5 MR. FOX: We are getting pretty close
6 to the end of this line of questioning. So
7 why don't we just run to that and then we'll
8 take a short break. Is that okay? If
9 somebody is in dire need --

10 MR. ENRIGHT: If it's another ten
11 minutes, that's fine. If it's going to be
12 longer than that, I think I need to use the
13 restroom.

14 MR. FOX: We've all been in that boat.
15 All right. Why don't we take a -- can
16 we do a five-minute break? Is that
17 reasonable? I'm just trying to accelerate
18 things as much as possible.

19 MR. ENRIGHT: Sure.

20 MR. FOX: Let's take a five-minute
21 break. I have 4:56 Eastern time, which I
22 guess would be 1:56 Pacific time. Let's
23 come back a minute or two after 2:00 p.m.
24 Pacific time. Does that sound good to
25 everyone?

1 VIDEOGRAPHER: We're going off the
2 record at 1:56 p.m. This is the end of
3 Media 4.

4 (Recess taken.)

5 (Exhibits 9, 10 and 11 were marked.)

6 VIDEOGRAPHER: We're on the record at
7 2:09 p.m. This is the beginning of Media
8 Number 5 in the deposition of James Fabian.

9 BY MR. FOX:

10 Q Okay. We're back on the record,
11 Mr. Fabian. And while we were off, I introduced
12 and labeled three new exhibits which we're going
13 to take a look at in a second.

14 Right before we broke, you were
15 talking about the screenshots of your BitGrail
16 account; is that correct?

17 A Yes.

18 Q Okay. So let's take a look at one of
19 these. This is a document that has been marked.
20 It's been marked Exhibit 9. I'm pulling it up
21 right now and I'm about to share it with
22 everyone.

23 The document has a Bates stamp of
24 L&K_00712.

25 Mr. Fabian, have you seen this

1 document before?

2 A This one, I don't believe so.

3 Q The fact that it has the Bates stamp
4 with the prefix L&K indicates that it was
5 produced in this litigation by your counsel.
6 And I will represent to you that that is indeed
7 the case.

8 Do you have any idea where they would
9 have gotten it if it wasn't from you?

10 A I'm not sure.

11 Q Is it still your testimony that you
12 don't recognize it?

13 A Yes, I don't believe I recognize this
14 one.

15 Q Okay. Let's take a look at a
16 different one. I'm going to stop the share and
17 pull up Exhibit Number 10.

18 Mr. Fabian, I'm showing you a document
19 that's been marked Exhibit Number 10.

20 This document bears the Bates stamp
21 zero -- strike that.

22 This document bears the Bates stamp
23 L&K_00673. I'll scroll down so you can see
24 more of it.

25 Do you recognize this document?

1 A It looks like the one we just saw. I
2 believe it was the same document.

3 Q I'm going to represent to you that it
4 does appear to be the same one, just maybe like
5 zoomed in a little more so the other one has
6 some more information from the screen visible.

7 Fair to say this looks like a
8 screenshot --

9 A Yes.

10 Q -- on the website?

11 A It does.

12 Q Is it your testimony that just like
13 you didn't recognize the previous document
14 that's been marked as Exhibit 9, you don't
15 recognize this one?

16 A Yes, I don't believe so.

17 Q And I'm going to represent to you that
18 based on the Bates stamp, this is a document
19 that was -- I'm going to represent to you this
20 was produced by your counsel in this litigation
21 and point out for the record that it bears a
22 Bates stamp indicating the same.

23 Again, the same question, any idea
24 where your counsel would have gotten this if
25 wasn't from you?

1 A I'm not sure.

2 Q Any idea why they would produce
3 something that wasn't from you?

4 A I do not know.

5 Q Looking at this number here and
6 toggling over, it looks like in a row entitled
7 XRB, it's got 523.009711483.

8 Does that look familiar to you as an
9 account balance you ever had at BitGrail?

10 A Not that I recall.

11 Q Okay. Let's take a look at another
12 one. We'll stop the share and pull up Exhibit
13 Number 11.

14 BY MR. FOX:

15 Q All right, Mr. Fabian, I have a
16 document up on the screen, can you see it that
17 bears a sticker that says "Exhibit 11" on it?

18 A Yes.

19 Q And it's a little bit difficult to see
20 the Bates stamp. I can see it here and I guess
21 if I can see it, you can probably see it. The
22 Bates stamp on this document is L&K_00882
23 indicating this document also was produced by
24 your counsel in this litigation.

25 Have you seen this document before?

1 A I have.

2 Q Okay. What is it?

3 A This is a screenshot of my account
4 balance.

5 Q Do you see your name on it anywhere?

6 A I do not see my name, but I do see
7 identifying marks like the Lincoln Financial
8 head, which is my company and also Citrixweb and
9 L4B which is also my company.

10 Q Citrixweb is your company. Is that
11 your testimony?

12 A It's an app that we use on our
13 computers.

14 Q Okay. So Citrixweb is an application
15 that you use as part of your work?

16 A Yes, and then the L4B next to it,
17 that's Lincoln for Benefits, correct. And the
18 next one is my home page for Lincoln Financial.
19 And then MEW next to it is our marketing web
20 page.

21 MR. FOX: All right. Let the record
22 reflect that Mr. Fabian indeed was referring
23 to an icon that indeed appears to be the
24 white silhouette of Abraham Lincoln against
25 a red square background at the top of this

1 page.

2 Q All right. Do you see any date on
3 this document?

4 A Can you scroll up, please?

5 Q Yes.

6 A I do not think so. No.

7 Q If you look at the bottom, do you see
8 a copyright date?

9 A 2018.

10 Q Okay. Fair to say this statement is
11 from some time after December 31st, 2017?

12 A I believe so, yes.

13 Q And how many -- well, let me stop --
14 strike that.

15 Would you mind walking us through the
16 rows and columns reflected in this screenshot?

17 A Yes, so the first one is BTC, which
18 stands for Bitcoin. And then the second one is
19 XRB, which the RaiBlocks or Nano and the balance
20 of it. And the rest are all various coins that
21 I have no stake in.

22 Q What do you understand the column
23 "Reserved" to mean?

24 A I do not know.

25 Q And the column "Pending deposits,"

1 any --

2 A Yes, usually if you transferred in
3 from another -- what do you call it, the
4 exchange and the funds weren't ready yet, it
5 would say "pending."

6 Q And the "History" column, what's
7 reflected in that column to your understanding?

8 A I'm not sure.

9 Q Do you have any memory of when you
10 took the screenshot?

11 A I do not remember exactly, no. It was
12 some time after I transferred out the 110 to the
13 wallet, XRB wallet. So that should help clarify
14 timeline.

15 Q Do you remember about when you
16 transferred that 110 XRB out of the BitGrail
17 wallet?

18 A It was a little -- I want to say early
19 2018. It was a little bit before access was
20 shut off to the XRB.

21 Q Okay. And just to clarify, it's your
22 testimony that you yourself did take this
23 screenshot; correct?

24 A I did.

25 Q And is it your testimony that it was

1 taken before the BitGrail exchange closed?

2 A I don't know for sure. It might have
3 even been taken after. You couldn't get access
4 and at some point they did allow access for a
5 small portion of time and I did get in. I think
6 that might have been when I took it.

7 But again, it showed balances that
8 weren't available.

9 Q Did you have -- strike that.

10 Do you have access to your BitGrail
11 account now?

12 A I don't believe so.

13 Q Have you tried to access your BitGrail
14 account?

15 A I believe I tried a few months back
16 and there was -- I think it said no longer
17 existed or that the website in general.

18 Q Do you think that would have been
19 before or after May 29th, 2020?

20 A Probably after. I'm not exactly sure,
21 but --

22 Q Why did you try to access it?

23 A Just to see if I can see if anything
24 was in there.

25 Q Did anybody ever ask you to try to

1 access your BitGrail account?

2 A I think we were just trying to go in
3 there to see if we can verify any kind of funds
4 or anything like that. I don't know if anyone
5 in particular asked me to do it, but in trying
6 to get information.

7 Q Who's "we"?

8 A Legal counsel.

9 Q Okay. Did you ever look at your email
10 from -- emails from BitGrail at any point over
11 the last couple of months?

12 A Yes.

13 Q Anybody ask you to do that?

14 A Yes, counsel did.

15 MR. ENRIGHT: I'll remind the witness
16 not to discuss communications between the
17 witness and his counsel.

18 BY MR. FOX:

19 Q Okay. Let's go -- I'm going to close
20 out of this, stop the share, let's go back to
21 the complaint. Bear with me for a second.

22 Something happened with putting this
23 up that I didn't want to happen. So just hold
24 on.

25 MR. FOX: Should have it all

1 straightened out here. Let me share the
2 screen. Can everybody hear and see me okay?

3 THE WITNESS: Yes.

4 BY MR. FOX:

5 Q Mr. Fabian, can you see the complaint
6 here?

7 A Yes.

8 Q Okay. Let's go back to Paragraph 195,
9 which is a document that we talked about
10 before -- or, excuse me, a paragraph that we
11 talked about before which is in a document that
12 we talked about before.

13 All right. We've reviewed the
14 language in this paragraph; correct, Mr. Fabian?

15 A Correct.

16 Q So when precisely did you own the
17 23,033 XRB?

18 A I don't know the exact dates, but it
19 was somewhere between -- the full 23,000 I think
20 wasn't met until December of 2017 and so I held
21 on to that until it was -- until I transferred
22 out the 110.

23 Q So do you have a date range between
24 when and when you had 23,033 XRB in your
25 account?

1 A I would say probably from that
2 December 2017 date. I don't know the exact date
3 when I withdrew the 110, but I would assume that
4 to be early 2018.

5 Q Okay. So it's your testimony that the
6 23,033 reflects the amount that you had before
7 you transferred out the 110 XRB; is that
8 correct?

9 MR. ENRIGHT: Objection, misstates the
10 record.

11 THE WITNESS: No, that was after I
12 transferred out the 110.

13 BY MR. FOX:

14 Q Got it. So it's your testimony that
15 you held 23,033 XRB in your account from the day
16 that you transferred the 110 out through the
17 close of BitGrail. Is that your testimony?

18 A Yes.

19 Q And do you have any records to support
20 this contention other than the screenshot that
21 we just looked at?

22 A Just a screenshot and the 110 XRB if
23 we can find the wallet.

24 Q And fair to say that the screenshot
25 doesn't reflect precisely 23,033, but it's

1 23,033 and some fraction.

2 I know we don't have that in front of
3 are us right now. If I told you that, would you
4 have any reason to doubt it?

5 A No.

6 Q Any idea why there might be a
7 discrepancy between that and what's alleged in
8 the complaint?

9 A I do not.

10 Q Okay. So let's go to 196. Do you see
11 where it says the 23,033 XRB had a market value
12 of approximately \$275,000 as of February 8th,
13 2018?

14 We talked earlier in the deposition
15 about how you arrived at this number. It was
16 your testimony that you believe that as of
17 February 8th, there was some sort of price
18 report -- public price reporting about the value
19 of XRB that led you to calculate this
20 275,000-dollar figure; is that correct?

21 A Correct.

22 Q Do you have any records reflecting
23 that value on that date?

24 A Personally, no.

25 Q I want to introduce one more document

1 before we leave this line of questioning, so I'm
2 going to stop the share and introduce another
3 exhibit.

4 (Exhibit 12 was marked.)

5 BY MR. FOX:

6 Q I have a document up on the screen.
7 It's been marked as Exhibit 12. It bears the
8 Bates stamp L&K_00885.

9 Do you see this document, Mr. Fabian?

10 A I do.

11 Q All right. Blow it up a little bit.
12 Do you recognize it?

13 A I just want to let you know my
14 connection just broke and then automatically
15 reinitiated. So apologies for me apparently
16 dropping out for a second. That was not my
17 doing.

18 Q Okay. All right. Can you see
19 everybody and --

20 A Yes, I appear to be fully back.

21 Q Okay. Great. Do you recognize this
22 document, Mr. Fabian?

23 A Yes, it looks like a withdrawal
24 history from Bittrex.

25 Q Okay. When do you see withdrawals

1 reflected on this -- in this document?

2 A This one looks like there's one on
3 April 19th, 2018, one on February 27th, 2018 and
4 then the bottom one is cut off. There you go.
5 February 3rd, 2018.

6 MR. ENRIGHT: I'm sorry. Maybe I'm
7 reading this wrong, but the dates appear to
8 be 2018, if I'm looking at the right thing.

9 MR. FOX: I think the witness said
10 these were all from 2018.

11 MR. ENRIGHT: I'm sorry, I thought he
12 said 2019.

13 THE WITNESS: I read it as 2018.

14 MR. ENRIGHT: I'm sorry, I must have
15 misheard.

16 BY MR. FOX:

17 Q Your testimony is that those were
18 withdrawals from Bittrex; correct?

19 A It appears so.

20 Q All right. For the April 2018
21 withdrawal, what type of currency was being
22 withdrawn?

23 A It looks like Bitcoin.

24 Q And the February 27th withdrawal, what
25 currency was being withdrawn?

1 A That one is ZCL. I can't remember the
2 name off the top of my head for the actual coin.

3 Q For February 3rd, 2018, what currency
4 was being withdrawn?

5 A Bitcoin.

6 Q Do you remember where you were
7 withdrawing these currencies to, Mr. Fabian?

8 A I do not.

9 Q Did you give this document to your
10 counsel to produce in this litigation?

11 A I believe I did, yes.

12 Q Why did you give it to your counsel to
13 produce in this litigation?

14 A Upon request.

15 Q Without -- strike that.

16 Does it seem at all relevant to any of
17 the allegations in the complaint?

18 A I'm not sure.

19 Q Does it relate to any of the
20 transactions that we just talked about?

21 A I have no idea.

22 Q So would it be fair to say that this
23 document is not related to any of your
24 allegations or claims in this case?

25 A I can't be certain.

1 Q I'm going to stop the share. We don't
2 need to look at this anymore. I want to review
3 your testimony about the transactions on
4 BitGrail.

5 I want to confirm that it's your
6 testimony that you do not have any records of
7 opening an account at BitGrail; correct?

8 MR. ENRIGHT: Objection, asked and
9 answered. You can answer.

10 THE WITNESS: I don't believe so.

11 BY MR. FOX:

12 Q With the exception of possibly emails
13 that you're going to look for; is that correct?

14 A Correct.

15 Q And it's your testimony that you don't
16 have any records of purchasing 21,143 XRB on
17 September 1st, 2017 on BitGrail; is that
18 correct?

19 MR. ENRIGHT: Objection, misstates the
20 prior testimony and also asked and answered.

21 THE WITNESS: Correct, I'd have to see
22 if there's emails on that or not.

23 BY MR. FOX:

24 Q Will you look for those emails?

25 A Yes, I will.

1 Q Can you confirm it's your testimony
2 that you don't have any records of purchasing
3 2,000 XRB on December 12, 2017 on BitGrail?

4 A I don't believe I do -- what's that?

5 Q Go ahead.

6 A I don't believe I do, but again, I'll
7 check the emails.

8 Q And can you confirm that it's your
9 testimony you don't have any records showing
10 your account balance at BitGrail on any specific
11 date?

12 A Just the screenshot.

13 Q Right. And is it your testimony that
14 you don't know what day that screenshot was
15 taken?

16 A I don't have the exact day, no.

17 Q Mr. Fabian, when you sell employee
18 benefit products for Lincoln Financial, do you
19 advise your customers to keep records of the
20 transactions that you enter into with them?

21 A I do not.

22 Q If a customer told you that he or she
23 had no intention of recording the transaction
24 with you, would that cause you any concern?

25 A It would not, no.

1 Q Would you say it's typical in your
2 business of sales of financial products for
3 people to not keep records of financial
4 transactions that they enter into?

5 A They would probably keep copies of
6 contracts.

7 Q Right. So, for example, if you sold
8 an insurance policy, you would expect that the
9 customer would keep a copy of the contract and
10 the policy; is that correct?

11 A Yes, correct.

12 Q Mr. Fabian, did you ever purchase XRB
13 on any dates other than September 1st, 2017 and
14 December 12th, 2017?

15 A It's possible.

16 Q When do you think you might have
17 purchased XRB other than on those two dates?

18 A I'm not sure if I did, if I made a
19 smaller transaction. I know the two we talked
20 about before were the two large ones. It would
21 be in between those two if there was any.

22 Q And where would you have purchased the
23 XRB?

24 A BitGrail as well.

25 Q Did you ever purchase XRB on any other

1 exchange?

2 A I don't believe so, no.

3 Q Did you ever receive XRB any other
4 way?

5 A I believe I received some on the
6 faucet drip when they first did that.

7 Q When would that have been?

8 A That was probably -- I don't have an
9 exact date, but probably 2017 or something like
10 that, somewhere.

11 Q Could it have been before April or May
12 of 2017?

13 A It could have been, yes. I don't know
14 the exact date.

15 Q Why don't we switch gears and talk
16 about something completely different.

17 Mr. Fabian, are you aware that
18 BitGrail exchange is the respondent in a
19 bankruptcy proceeding in Italy right now?

20 A I believe I heard about that, yes.

21 Q Have you been contacted by anyone
22 connected to that proceeding?

23 A There was some spam type emails but
24 nothing solid, no.

25 Q What do you mean by "spam"?

1 A I think there was either talk of it
2 like on Twitter, back and forth, things like
3 that.

4 Q Did you ever receive an email about
5 the proceeding in Italy?

6 A I don't know if it was regarding that
7 or not to be precise. I don't know.

8 Q If you told you that you did receive
9 an email from the trustees and that your counsel
10 produced it in this case, would you have any
11 reason to disagree with that?

12 A No.

13 Q Any recollection as to what you heard
14 from the trustees?

15 A There was just some chatter. I don't
16 remember exactly what it was. I knew they were
17 going to go after BitGrail, but I can't remember
18 the exact details.

19 Q Did you ever replying to anybody about
20 the -- strike that.

21 Did you ever communicate with anyone,
22 initiate communication with anyone about the
23 bankruptcy proceeding in Italy?

24 A I think there was a few emails, yes.

25 Q Who did you email?

1 A I do not know off the top of my head.

2 MR. FOX: All right. I'm going to
3 call for the production of all
4 correspondence connected to the bankruptcy
5 proceeding in Italy that Mr. Fabian has
6 control over or possession of.

7 MR. ENRIGHT: I don't think there's
8 anything that hasn't been produced.

9 MR. FOX: Well, he just testified that
10 he emailed someone. We have one email
11 incoming from the trustees.

12 MR. ENRIGHT: It's possible that what
13 he's talking about is an email to his own
14 counsel. So if there is an outgoing email
15 that is not privileged that we can locate,
16 we'll produce it.

17 MR. FOX: Great.

18 Q Mr. Fabian, again -- strike that.

19 Have you filed a proof of claim in the
20 bankruptcy proceeding in Italy?

21 A I don't believe so.

22 Q Do you think it's possible that you
23 could have filed a proof of claim and you
24 wouldn't know about it or wouldn't remember it
25 today?

1 A Can you explain what a proof of claim
2 is?

3 Q Sure, sure. So a proof of claim as
4 I'm using the term is a claim in a liquidation
5 proceeding that you are entitled to money from
6 the debtor.

7 A Okay.

8 Q In this context, I'm going to
9 represent to you that the trustees of the
10 BitGrail estate were soliciting proofs of claim
11 from users of BitGrail whose cryptocurrency was
12 frozen when the exchange was shut down.

13 Does that make it clearer to you?

14 A It does, yes.

15 Q Did you file a proof of claim in the
16 Italian bankruptcy proceeding?

17 A I may have. I'm not 100 percent sure.

18 Q So it's your testimony that you don't
19 know whether you have a pending claim in the
20 Italian bankruptcy proceeding?

21 A I do not know if I do.

22 Q And so I take it that you wouldn't
23 know whether your claim has been allowed or not?

24 A Correct. I would not know.

25 Q Did you hire counsel to advise you in

1 connection with the Italian bankruptcy
2 proceeding?

3 A I did not.

4 Q If you did file a claim in the Italian
5 bankruptcy claim, how much would you expect to
6 recover from the estate?

7 MR. ENRIGHT: Objection, calls for
8 speculation, incomplete hypothetical. The
9 witness can answer.

10 THE WITNESS: I probably would have
11 requested the 23,033.

12 BY MR. FOX:

13 Q So your testimony is that you would
14 have requested reimbursement for the full amount
15 that you claim you lost; is that correct?

16 A Yes, correct.

17 Q Do you ever any expectation as to what
18 percentage of that you would have expected to
19 receive?

20 MR. ENRIGHT: Objection. You can
21 answer.

22 THE WITNESS: I do not.

23 MR. FOX: All right. Just to be
24 clear, calling for the production of any
25 documents whatsoever in Mr. Fabian's

1 possession relating to the Italian
2 bankruptcy proceeding.

3 MR. ENRIGHT: If any exist.

4 MR. FOX: If any exist.

5 MR. ENRIGHT: Again, this was
6 something that was searched for. If
7 something somehow escaped our notice or
8 Mr. Fabian's notice in the course of the
9 search, if after another search we find
10 anything, we will produce it.

11 MR. FOX: Okay.

12 Q Mr. Fabian, do you use social media?

13 A I do.

14 Q What social media do you use?

15 A Just Instagram.

16 Q Do you use Twitter?

17 A I'm sorry, there is a Twitter account
18 too, yes.

19 Q Did you ever use Reddit?

20 A Sometimes.

21 Q Did you ever use Bitcointalk?

22 A I believe so.

23 Q Did you ever use Discord?

24 A I did.

25 Q Did you ever use Telegram?

1 A I did.

2 Q Did you ever use Facebook?

3 A I did, but I haven't had an account
4 for over five years probably.

5 Q Fair to say you didn't conduct any
6 cryptocurrency-related communications over
7 Facebook?

8 A I did not.

9 Q Let's start with Twitter. Do you have
10 any handles on Twitter other than
11 @HulksterCrypto?

12 A I don't believe so, no.

13 Q If you remembered one, would you let
14 your counsel know and ask him to advise us?

15 A I would.

16 Q Did you have a handle on Reddit?

17 A I don't believe so.

18 Q Is it possible to use Reddit without a
19 handle?

20 A I would assume so. I think so.

21 Q How did you get on to Reddit?

22 A Via website.

23 Q And did you ever post anything on
24 Reddit?

25 A I don't believe so.

1 Q If you decided to post something on
2 Reddit, what do you think it would -- how would
3 that post appear -- how would you be
4 identified -- strike all that.

5 How would you be identified in that
6 post?

7 MR. ENRIGHT: Objection, incomplete
8 hypothetical, assumes facts not in evidence,
9 calls for speculation.

10 THE WITNESS: I can't think off the
11 top of my head how Reddit allows you to post
12 or not.

13 BY MR. FOX:

14 Q Okay. Do you have an Instagram
15 handle?

16 A I do.

17 Q What is that?

18 A I believe it's just my name, James
19 Fabian.

20 Q Okay. Did you ever post on
21 Bitcointalk?

22 A I don't believe so.

23 Q Did you have a handle on Bitcointalk?

24 A I don't believe so.

25 Q Did you ever post on Discord?

1 A I can't think of anything.

2 Q Did you have a handle on Discord?

3 A I don't know.

4 Q Did you ever post on Telegram?

5 A I don't know.

6 Q Did you have a handle on Telegram?

7 A I believe I did.

8 Q What was your handle on Telegram?

9 A I don't know. I haven't used it in
10 years.

11 Q For those social media outlets that we
12 just talked about where you weren't sure whether
13 you made a post or had a handle, what would you
14 need to do to find out whether or not you had a
15 handle?

16 A I would probably have to go to the
17 website to see if there was a way to see if I
18 had a handle. It depends on the website.

19 Q Okay. All right. Very good.

20 Have you deleted any of your posts on
21 any social media platform since this case was
22 filed?

23 A I don't believe so, no.

24 Q I just want to remind you that if you
25 delete social media posts that are related to

1 the facts at issue in this case while the case
2 is pending, that could lead to sanctions, so
3 don't do it.

4 Let's switch gears again.

5 Mr. Fabian, what is a class action?

6 A So a class action is just a class of
7 people that all have the same commonality and
8 also a certain amount of people that are
9 involved as well to qualify.

10 Q What do you mean by the same
11 commonality?

12 A They all have the same issue, like in
13 this case they all have the same complaint of
14 having XRB taken.

15 Q If the class is certified in this
16 case, will you continue to have a role in it?

17 A I would.

18 Q What would that role would be?

19 A I believe I would be the lead in this
20 case.

21 Q Okay. And what does that entail?

22 A So that would mean being involved
23 looking at pertinent documents, supervising my
24 counsel to make sure they prosecute.

25 Q Can you provide examples of some of

1 those documents?

2 A Yes. Things that were presented by my
3 counsel like the claims, anything that comes,
4 you know, court related.

5 Q Why did you want to be a class
6 representative, Mr. Fabian?

7 A You know, I just felt there was a lot
8 of people who were hurt by this and so I thought
9 it was important that people were able to be
10 heard.

11 Q If the class is certified and you lose
12 the case, what effect will certification have on
13 the class members?

14 A I'm not sure.

15 Q If a class is certified and you settle
16 the case, what effect will that settlement have
17 on the class members?

18 A I would assume they would get part of
19 the settlement.

20 Q Do you know if it would have any other
21 effect on them?

22 A I'm not sure.

23 Q Do you know if it would effect any of
24 their rights?

25 A I'm not sure.

1 Q Who would be in the class -- or strike
2 that.

3 Who is in the class that you seek to
4 certify?

5 A Just other defendants who have lost
6 money through the BitGrail exchange.

7 Q You mean other --

8 A Plaintiffs, sorry, class members.

9 Q Is there anything else about them that
10 distinguishes -- is there any -- strike that.

11 Are there any other factors that
12 distinguish someone who's in the class from
13 someone who is not allowed to be in the class?

14 A Not that I know of other than, you
15 know, having XRB on BitGrail. Other than that.

16 Q Okay. Have you spoken to anybody who
17 you believe would be included in the class?

18 A I don't believe so.

19 Q What do you understand to be the
20 interests of the members of the class?

21 A I believe to get some of the proceeds
22 that were lost through BitGrail.

23 Q Do you understand them to have any
24 other interests associated with their membership
25 in the class?

1 A Not that I know of.

2 Q What do you understand to be the
3 interest of your lawyers in this case?

4 A To represent the -- all of the members
5 of the class.

6 Q Do you understand them to have any
7 other interest beyond that?

8 A I'm not sure what the other interests
9 are.

10 Q Well, you testified earlier that you
11 understand that there is a contingency
12 arrangement in place; isn't that correct?

13 A Correct, yes.

14 Q Do you know if there is a mechanism
15 for your -- strike that.

16 Do you believe that the interests of
17 your lawyers and the class are aligned?

18 A I do.

19 Q We talked about your involvement with
20 respect to the amended complaint and we talked
21 about your involvement with respect to the
22 interrogatory responses.

23 How else have you been involved in
24 this litigation?

25 A In general, speaking with my counsel

1 on a regular basis.

2 Q Who do you usually talk to when you
3 speak with your counsel?

4 A Representatives from Silver Miller,
5 from Zelle and Levi & Korinsky.

6 Q Specifically which lawyers do you
7 generally talk to?

8 A Usually they're all on at the same
9 time, so it's kind of hard to differentiate who.
10 But, you know, some of the representatives that
11 are on this phone now.

12 Q Okay. Is there anybody else who --
13 who you've talked to frequently?

14 A Just these people that I've had the
15 most contact with.

16 Q Okay. By "these people," you're
17 referring to Mr. Enright and Mr. Silver and
18 Mr. Carriel; is that correct?

19 A Yes.

20 Q How do you guys usually communicate?

21 A It varies. Either phone call, email.

22 Q And how often do you normally talk
23 with them would you say?

24 A It varies depending where we're at in
25 the litigation. So I'm not sure how to answer

1 that.

2 Q In the last 30 days, how many times
3 would you say you communicated with your
4 lawyers?

5 A In the last 30 days, probably 40 times
6 or so.

7 Q So it's your testimony that you talk
8 to your lawyers more than once a day?

9 MR. ENRIGHT: Objection, misstates his
10 testimony. Your first question asked for
11 how often he communicates and now you're
12 asking how often he's spoken.

13 BY MR. FOX:

14 Q Okay. How many separate instances --
15 strike that.

16 About how many conversations have you
17 had with your lawyers over the last 30 days?

18 A I would say about 15 to 20.

19 Q How about the 30 days before that?

20 A I couldn't put a number on it. I'm
21 not sure.

22 Q Do you think it's more?

23 A Probably less.

24 Q You testified that you communicate by
25 email as well; correct?

1 A Correct.

2 Q About how many emails would you say
3 you've exchanged with your lawyers over the last
4 30 days?

5 A Again, estimate, I would say 25-ish,
6 somewhere around there.

7 Q Do your lawyers get your approval
8 before they file or oppose a motion in this
9 case?

10 A I believe they do, yes.

11 Q What motions have been filed in this
12 case to your knowledge?

13 A This motion to form the class. I'm
14 not too sure about what was filed before off the
15 top of my head.

16 Q Do you know of any motions that were
17 filed in the spring and summer of last year?

18 A I'm not sure what was filed then.

19 Q Did you ever talk about a motion to
20 dismiss?

21 A I'm not sure if we spoke about that.

22 Q Do you know whether your lawyers filed
23 another case against the same defendants raising
24 the same claims that you're raising in this
25 case?

1 A I'm not aware. I'm not sure.

2 Q So you haven't seen any other
3 complaint?

4 A Other than the one I'm involved in, I
5 don't believe so.

6 Q Do you know if your lawyers filed a
7 motion to consolidate that other case with this
8 case?

9 A I don't remember.

10 Q So you don't remember ever giving them
11 approval to file that motion?

12 A There was a -- I believe -- I don't
13 know which is which, so I'm getting a little
14 confused. I know there was the approval to
15 consolidate this class. So I don't know --

16 Q You mean to certify the class?

17 A Certify the class.

18 Q Right. But you don't recall giving
19 approval to consolidate this case with a totally
20 different case?

21 A I'm not sure.

22 Q If there were 14 other lead plaintiffs
23 in this case, Mr. Fabian, how do you think your
24 role would change?

25 A I don't know if it would change.

1 Q Did you ever talk with your lawyers
2 about the possibility that there might be 14
3 other lead plaintiffs in this case?

4 A Yes. I don't know if they are a lead,
5 I just know there are other people.

6 Q What do you think about that?

7 A I have no issue with it.

8 Q Do you think what you might -- do you
9 understand what you might receive if you win the
10 case could be different if there were 14 other
11 lead plaintiffs?

12 MR. ENRIGHT: Objection, assumes facts
13 not in evidence, calls for speculation.

14 MR. FOX: I just want to know if
15 that's his belief.

16 Q Is that your belief?

17 A I'm not sure.

18 Q Mr. Fabian, how would you feel about
19 litigating this case in Italy?

20 A I don't really have an opinion on
21 that.

22 Q Did you ever talk about that
23 possibility with any lawyers?

24 A I don't believe so.

25 Q Did they ever tell you there was a

1 motion to move this case to Italy?

2 A I can't recall.

3 Q Did they ever ask you about how to
4 oppose that motion?

5 MR. ENRIGHT: Objection, this entire
6 line of questioning is entirely intrusive
7 into the attorney-client communications.
8 I've tried to give you some leeway here
9 because he is a class representative and
10 because he's representing other class --
11 absent class members.

12 But this is going on more than long
13 enough. I'm going to direct the witness not
14 to answer.

15 BY MR. FOX:

16 Q Mr. Fabian, how many claims did you
17 have at the beginning of this case?

18 A I'm not sure.

19 Q If I told you there were 11 claims at
20 the beginning of this case, would you have any
21 reason to doubt me?

22 A I would not.

23 Q How many claims remain in this case?

24 A I'm not sure.

25 Q You don't know how many claims you

1 have pending in this case?

2 A I do not.

3 Q If I told you that eight claims were
4 dismissed, would that sound wrong to you?

5 A I would not know.

6 Q Do you know why those eight claims --
7 I'm going to represent to you that eight claims
8 were, in fact, dismissed.

9 Do you know why those eight claims
10 were dismissed?

11 A I do not.

12 Q Did you ever talk about that with your
13 lawyers?

14 A I don't believe so.

15 Q What documents did you give your
16 lawyers to produce in discovery?

17 A We did a search of my email for key
18 terms and those things that popped up were sent
19 over.

20 Q Do you recall specifically which
21 documents you sent over?

22 A There was the snapshots from Coinbase,
23 I believe Bittrex, I'm not sure, the snapshot of
24 my account balance in BitGrail, and I think -- I
25 believe a few emails.

1 Q Okay. Are there any documents that
2 were produced in this litigation by your counsel
3 that they didn't get from you?

4 A I do not know.

5 Q Did you review the production before
6 it was made?

7 A I'm not sure.

8 Q Is it possible that you reviewed the
9 production and forgot looking at 800 pages of
10 documents? Is that likely?

11 A It's not.

12 Q So safe to say you did not review the
13 production?

14 A I do not know what the production is,
15 so I can't answer that.

16 Q Did you look at the documents that
17 your lawyers produced on your behalf to the
18 defendants before they were produced?

19 A I reviewed documents that were sent to
20 me by my counsel, yes.

21 Q Do you remember about how many there
22 were?

23 A I do not.

24 Q Did you see any documents they did not
25 get directly from you?

1 A I do not know.

2 Q Mr. Fabian, who decides whether to
3 settle this case?

4 A I do not know who settles at the end
5 of the day.

6 Q Okay. Mr. Fabian, are your counsel
7 authorized to legally bind you with respect to
8 the matters in this case?

9 A I'm not sure. I don't know what that
10 means.

11 Q I'll rephrase the question.
12 Have you authorized them to take
13 positions that affect your rights in this case?

14 A I believe so. I hired them as my
15 representation.

16 Q And it's your understanding that
17 lawyers serve as agents to their clients; is
18 that correct?

19 A Correct.

20 Q And is it your understanding that as
21 an agent, when the lawyer acts on the client's
22 behalf, the client is bound by that action? Is
23 that correct?

24 A Correct.

25 Q Is that true for all of the lawyers

1 that you hired?

2 A I don't know.

3 Q Are there any lawyers that you hired
4 that don't have authorization to bind you?

5 A I don't know the answer to that.

6 Q What don't you know about it? You
7 don't understand the question?

8 A I don't know the legal jargon on who
9 exactly, but I assume all three firms would have
10 the same rights.

11 Q Right. All three firms are your
12 lawyers; is that correct?

13 A Correct.

14 Q And that's true with respect to David
15 Silver?

16 A He's one of them, yes.

17 Q David Silver has authority to bind you
18 with respect to matters in this case. Is that
19 your testimony?

20 A I believe so.

21 MR. FOX: Why don't we take a break.
22 We're getting pretty close to the end, so
23 you should be happy. Can we come back in
24 ten minutes? Does that work for people?

25 THE REPORTER: Sure.

1 MR. ENRIGHT: Works for me.

2 VIDEOGRAPHER: We're going off the
3 record at 3:05 p.m. This is the end of
4 Media 4.

5 (Recess taken.)

6 VIDEOGRAPHER: We're on the record at
7 3:20 p.m. This is the beginning of Media 6
8 in the deposition of James Fabian.

9 MR. FOX: Okay. Mr. Fabian, we are
10 back on the record and I have what I believe
11 is going to be good news for you. We have
12 no further questions in this deposition.

13 While we are on the record, I do want
14 to make clear, as was disclosed in our
15 notice of this deposition, this deposition
16 is for purposes of the motion for class
17 certification only.

18 So, Mr. Fabian, should the case
19 proceed so far, we will be having you back
20 for a second deposition on the merits of the
21 case. And I want to reserve those rights
22 and also reserve rights to depose you on any
23 documents that should have been produced and
24 produced in response to your original
25 request.

1 Mr. Naunton, any questions from your
2 end?

3 MR. NAUNTON: I have no question at
4 this time.

5 Thank you for your time today,
6 Mr. Fabian.

7 But I would just join in the
8 reservation of rights on the record that
9 Mr. Fox just made with respect to
10 questioning you at a later time with respect
11 to any additional documents that are
12 produced with respect to the merits if we
13 get that far.

14 THE WITNESS: No problem.

15 MR. FOX: Very good.

16 MR. ENRIGHT: I'm going to have a
17 couple minutes of redirect, very briefly.

18 MR. FOX: Go ahead.

19 EXAMINATION

20 BY MR. ENRIGHT:

21 Q Mr. Fabian, you testified earlier that
22 you were aware that counsel were working with
23 other plaintiffs that help represent the class;
24 correct?

25 A Correct.

1 Q Did you understand the exact mechanics
2 of how we were going to do that?

3 A The exact mechanics, no.

4 Q Do you recall if your counsel sent to
5 you any documents regarding doing that?

6 A I believe there were, yes.

7 Q And did you review those?

8 A I did. I just wasn't sure what the
9 title was of it, what it was called.

10 Q Okay. And did you ever specifically
11 authorize Mr. Silver or anyone else to release
12 or settle your claims in this case or in any
13 other case?

14 A No, not on my behalf.

15 MR. ENRIGHT: Okay. I have nothing
16 further.

17 MR. FOX: Okay. I just want to say
18 for the record, although I think it's clear
19 already in the transcript, that this
20 redirect and the answers, which in some
21 cases are intentioned to the previous
22 testimony, follows a 15-minute break in the
23 deposition.

24 MR. ENRIGHT: With that, we will
25 adjourn.

1 MR. FOX: Thank you very much,
2 Mr. Fabian.

3 VIDEOGRAPHER: We're off the record at
4 3:23 p.m. And this concludes today's
5 testimony given by James Fabian. The total
6 number of media units used was six and will
7 be retained by Veritext.

8 (Proceedings concluded at 3:23 p.m.)
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1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of
3 California, do hereby certify:

4 That the foregoing proceedings were
5 taken before me at the time and place herein set
6 forth; that a record of the proceedings was made
7 by me using machine shorthand which was
8 thereafter transcribed under my direction; that
9 the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing
12 pertains to the original transcript of a
13 deposition in a Federal Case, before completion
14 of the proceedings, review of the transcript []
15 was [X] was not requested.

16 I further certify I am neither
17 financially interested in the action nor a
18 relative or employee of any attorney or party
19 to this action.

20 IN WITNESS WHEREOF, I have this date
21 subscribed my name.

22
23 
24

25 LYNNE MARIE LEDANOIS

CSR No. 6811

1 NAME OF CASE: James Fabian v Nano, et al.,

2 DATE OF DEPOSITION: 8/7/20

3 NAME OF WITNESS: James Fabian

4 Reason codes:

5 1. To clarify the record.

2. To conform to the facts.

6 3. To correct transcription errors.

7 Page ____ Line ____ Reason ____

From _____ to _____

8

9 Page ____ Line ____ Reason ____

From _____ to _____

10

11 Page ____ Line ____ Reason ____

From _____ to _____

12

13 Page ____ Line ____ Reason ____

From _____ to _____

14

15 Page ____ Line ____ Reason ____

From _____ to _____

16

17 Page ____ Line ____ Reason ____

From _____ to _____

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19 Page ____ Line ____ Reason ____

From _____ to _____

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES FABIAN, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

NANO F/K/A RAIBLOCKS F/K/A HIEUSYS,
LLC; COLIN LEMAHIEU; MICA BUSCH;
ZACH SHAPIRO; TROY RETZER; BG
SERVICES, S.R.L. F/K/A BITGRAIL S.R.L.
F/K/A WEBCOIN SOLUTIONS; and
FRANCESCO "THE BOMBER" FIRANO,

Defendants.

Case No. 4:19-cv-00054-YGR (SK)

**LEAD PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO DEFENDANTS' FIRST
SET OF INTERROGATORIES**

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge Sallie Kim

Case No. 4:19 cv-00054-YGR (SK)

LEAD PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
DEFENDANTS' FIRST SET OF INTERROGATORIES

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Local Rules 33 and 34 of the Northern District of California, Lead Plaintiff James Fabian (“Lead Plaintiff” or “Fabian”), by and through his undersigned counsel, hereby provide supplemental Responses and Objections to the First Set of Interrogatories propounded by Defendants Hieusys LLC, Colin LeMahieu, Mica Busch, Zack Shapiro, and Troy Retzer (collectively, the “Nano Defendants”). Lead Plaintiff served Responses and Objections to their Defendants’ First Set of Interrogatories on June 29, 2020 (the “First R&Os”). On July 8, 2020, Lead Plaintiff served their first set of supplemental Responses and Objections to Defendants’ First Set of Interrogatories (the “First Supplemental R&Os”). As with the First Supplemental R&Os, this Second Supplemental Response incorporates those in the First R&Os, while supplementing Responses to Interrogatories 4, 5, 6, 7, 8, 9, 12, and 13, with new language in bold. The same objections presented in the First R&Os and First Supplemental R&Os apply in full to these Second Supplemental Responses and Objections. Lead Plaintiff waives no objections in providing these Second Supplemental Responses and reserves all rights.

PRELIMINARY STATEMENT

1. These responses are all disclosed for the purpose of this above-captioned Action only. Each response is subject to all appropriate objections (including but not limited to objections concerning competency, relevancy, materiality, propriety, and admissibility) that would require the exclusion of any requested information if the information were sought to be introduced into evidence at the time of trial. All such objections and grounds are reserved and will be imposed at the time of trial or other appropriate proceedings.

2. Discovery is ongoing and Lead Plaintiff has not completed their investigations in this matter. The information set forth herein is true and correct to Lead Plaintiff’s best knowledge at this time, and is subject to correction for inadvertent errors or omissions, if any errors or omissions shall be found to exist. Furthermore, Lead Plaintiff’s responses are based upon the records and information presently available to Lead Plaintiff. The following responses are given without prejudice to the Lead Plaintiff’s right to introduce, at the time of trial or other proceedings, subsequently discovered information relating to the proof of presently known material facts, and to introduce all information,

1 whenever discovered, relating to the proof of subsequently discovered material facts. However, Lead
2 Plaintiff does not assume any duty of ongoing amendment to these responses.

3 3. Except for the facts, if any, explicitly admitted by Lead Plaintiff, no admission of any
4 nature whatsoever, incidental, inferred, or implied are intended by these responses or objections herein.
5 Lead Plaintiff's responses and objections shall not be deemed an admission or concession of the
6 existence of any facts set forth or assumed by these Interrogatories or that such objection or response
7 constitutes admissible evidence of any fact set forth or assumed.

8 4. If any information within the scope of the attorney-client privilege, the attorney work-
9 product doctrine, the right to privacy, the privilege for confidential or proprietary information or trade
10 secrets is inadvertently disclosed in these responses and/or the related document production, Lead
11 Plaintiff has not done so intentionally and reserve their right assert those privileges at any time in these
12 proceedings and further reserve the right to the return of all privileged information, including copies or
13 abstracts of the information.

14 5. This preliminary statement applies to each and every response or objections and is
15 incorporated in each as though set forth in full therein.

16 **GENERAL OBJECTIONS**

17 6. Lead Plaintiff objects to the Nano Defendants' First Set of Interrogatories
18 ("Interrogatories") to the extent that they seek information not relevant to the subject matter of this
19 action and are not proportional to the needs of this case. Lead Plaintiff will not respond to irrelevant
20 interrogatories.

21 7. Lead Plaintiff objects to the Interrogatories to the extent they would require the answers
22 containing confidential or proprietary information belonging to Lead Plaintiff or a third party. Lead
23 Plaintiff will answer such interrogatories pursuant to the protective order and stipulation entered on
24 February 24, 2020. [ECF Nos. 103-04].

25 8. Lead Plaintiff objects to the Interrogatories to the extent they seek information or
26 material prepared in anticipation of litigation or for trial of this or any other matter, to the extent that
27 such information or material is protected by the work-product doctrine, the attorney-client privilege, or
28 other applicable litigation privileges.

1 9. Lead Plaintiff bases the following responses herein on the assumption that the Nano
2 Defendants do not seek information protected by the attorney-client privilege, information protected
3 by the work-product doctrine, information protected by the Constitution or statutory rights of privacy
4 or constitutional protection, information protected by the confidentiality of statements made or contact
5 engaged in for settlement purposes, information protected by the confidential trade secrets privilege, or
6 other proprietary information and information irrelevant to the subject matter of this proceedings. To
7 the extent that the Nano Defendants' Interrogatories, or any part thereof, could be construed as seeking
8 such information, Lead Plaintiff objects thereto and asserts the foregoing privileges to the greatest
9 extent permitted by law.

10 10. Lead Plaintiff objects to the definitions and instructions of "Relating To" and "All"
11 included in the Interrogatories as being overbroad, unduly burdensome, and harassing. Lead Plaintiff
12 will respond to any Interrogatories incorporating these (or similar) terms based on a reasonable
13 interpretation of the term as used in these particular Interrogatories.

14 11. Lead Plaintiff objects to answering any Interrogatories that would contain information
15 equally available to the Nano Defendants, including, but not limited to, third-party information or
16 information publically available.

17 12. Lead Plaintiff objects to each Interrogatory to the extent they are overly broad and thus
18 unduly burdensome.

19 13. Lead Plaintiff objects to each Interrogatory to the extent they are vague and ambiguous.
20 Lead Plaintiff similarly objects to the extent each interrogatory would require Lead Plaintiff to
21 speculate as to the nature and/or scope of the information sought thereby. Lead Plaintiff has relied on
22 the Nano Defendants' defined terms and have interpreted each Interrogatory in good faith.

23 14. Lead Plaintiff objects to each of the Interrogatories on the grounds they are
24 unintelligible, incomplete, compound, oppressive, or intended to harass.

25 15. Lead Plaintiff objects to each Interrogatory to the extent it requires them to make legal
26 conclusions.

27 16. Lead Plaintiff objects to each Interrogatory to the extent it compounds another
28 Interrogatory.

17. Lead Plaintiff objects to each Interrogatory to the extent they request information not in the Lead Plaintiff's possession, custody, or control. Lead Plaintiff has no obligation under the discovery rules to seek information from third parties.

18. Lead Plaintiff objects to the Interrogatories on the basis that the Interrogatories and their subparts exceed the maximum number allowable under the Federal Rules of Civil Procedure and Local Rules.

INCORPORATION OF GENERAL OBJECTIONS

19. Each of the general objections is hereby incorporated by reference as though fully set forth in each of the specific responses made herein. Notwithstanding the specific response to any of the Nano Defendants' Interrogatories, Lead Plaintiff does not waive any of the general objections made herein, nor any other objection reasonably available. Each of the above general objections is asserted as to each of the Interrogatories propounded by the Nano Defendants.

INTERROGATORIES AND RESPONSES THERETO

INTERROGATORY NO. 1:

Identify each challenged statement, if any, made by:

- a.) Colin LeMahieu,
- b.) Mica Busch,
- c.) Zack Shaprio,
- d.) Troy Retzer, and
- e.) Hieusys LLC

In this Interrogatory, "identify" means to quote or describe in detail the challenged statement, to state the medium or media through which the statement was made (e.g., email, Twitter post, telephone conversation), and to state where, when, by whom, and to whom the challenged statement was made.

RESPONSE TO INTERROGATORY NO. 1:

Lead Plaintiff objects to this Interrogatory as overbroad and unduly burdensome because it seeks "each challenged statement" and is therefore not proportional to the needs of the case. This is particularly the case as the definitions in the Interrogatory construe "each" as inclusive rather than

exclusive. Nano Defendants will need to provide this Interrogatory more specifically so that Lead Plaintiff can properly respond to the Interrogatory. This Interrogatory does not differentiate which challenged statements, if all, are already available to the Nano Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by reference to the Complaint.

Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney work-product.

Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

Subject to the foregoing objections, Plaintiff states that the challenged statements are set forth in detail in the operative complaint pending in this Action. Specifically, the operative complaint contains all challenged statements of which Lead Plaintiff is currently aware. Stated otherwise, based on Lead Plaintiff's current information, the challenged statements are limited to those in the operative complaint. These challenged statements from the operative complaint, the means of their dissemination, and those to whom Lead Plaintiff believes those challenged statements were made, may be found as to each of the listed defendants in the operative complaint as follows:

a) Colin LeMahieu: ¶¶ 69, 72, 79, 86, 88, 89, 92, 94, 96, 97, 98, 109, 112, 113, 114, 121, 124, 127, 131, 138, 139, 141, 144, 154, 164, and 165.

b) Mica Busch: ¶¶ 91, 109, 112, 113, 114, 131, 133, 134, 144, 154, 164, and 165.

c) Zack Shapiro: ¶¶ 109, 112, 113, 114, 116, 117, 118, 119, 131, 144, 154, 164, 165, 166, 168, and 169.

d) Troy Retzer: ¶¶ 76, 78, 109, 112, 113, 114, 129, 131, 142, 143, 144, 154, 164, and 165.

e) Hieusys LLC: ¶¶ 109, 112, 113, 114, 131, 144, 154, 164, and 165.

Lead Plaintiff reserves the right to address and raise additional challenged statements not raised in the operative complaint should Lead Plaintiff become aware of those challenged statements.

INTERROGATORY NO. 2:

For any challenged statement that you contend was "made" by a person who did not write or speak such statement, describe in detail your basis for such attributing the statement to that person.

RESPONSE TO INTERROGATORY NO. 2:

1 Lead Plaintiff objects to this Interrogatory as overbroad and unduly burdensome because it
 2 seeks “any challenged statement” and is therefore not proportional to the needs of the case. This is
 3 particularly the case as the definitions in the Interrogatory construe “any” as inclusive rather than
 4 exclusive. Nano Defendants will need to provide this Interrogatory more specifically so that Lead
 5 Plaintiff can properly respond to the Interrogatory. This Interrogatory does not differentiate which
 6 challenged statements, if all, are already available to the Nano Defendants on the basis of the Nano
 7 Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that
 8 this information is already readily available to the Nano Defendants by reference to the Complaint.

9 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
 10 work-product.

11 Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

12 Subject to the foregoing objections, Plaintiff states that the challenged statements and the bases
 13 for attribution are set forth in detail in the operative complaint pending in this Action. Specifically, the
 14 specific allegations of the operative complaint in paragraphs 5, 22, 23, 71, 77, 78, 79, 80, 93, 96, 120,
 15 125, 164, 165, 166, 167, 168, 169, 170, 204, 205, 228, 229, 230, 233, 234, 239, 240, and 241 contain
 16 bases for attributing each challenged statement to the respective Defendant. The basis for attributing
 17 any challenged statement to any particular Defendant is incorporated within the operative complaint
 18 and within Lead Plaintiff’s responses to Defendants’ Motions to Dismiss (ECF Nos. 63, 91).
 19 Additionally, and in specific regards to the Nano Twitter account, Defendant LeMahieu directly
 20 conducted and supervised Nano’s social media outreach, and that together the Nano Defendants
 21 exercised control over Nano and BitGrail—including over Nano’s social media accounts. *See*
 22 Complaint, ¶¶ 69, 71-72, 78, 96, 114, 228-30; *see also* First Response to Defendants Motion to Dismiss
 23 at 14, 19, 22, 24 (ECF No. 63).

24 Lead Plaintiff reserves the right to address and raise additional bases for attributing challenged
 25 statements to Defendants in addition to those raised in the complaint should Lead Plaintiff become
 26 aware of those bases. Lead Plaintiff expects such information to be forthcoming in discovery.

27 **INTERROGATORY NO. 3:**

28 For any challenged statement that you contend was not made to you, describe in detail the date

on which, and the circumstances in which, you received it.

RESPONSE TO INTERROGATORY NO. 3:

Lead Plaintiff objects to this Interrogatory as overbroad and unduly burdensome because it seeks “any challenged statement” and is therefore not proportional to the needs of the case. This is particularly the case as the definitions in the Interrogatory construe “any” as inclusive rather than exclusive. Nano Defendants will need to provide this Interrogatory more specifically so that Lead Plaintiff can properly respond to the Interrogatory. This Interrogatory does not differentiate which challenged statements, if all, are already available to the Nano Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by reference to the Complaint.

Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney work-product.

Lead Plaintiff also objects on the basis to the extent that the Interrogatory seeks legal conclusions.

Subject to the foregoing objections, Plaintiff states that the challenged statements were generally received and viewed by Plaintiff on the Internet promptly after they were disseminated. Specifically, and without excluding any challenged statement not mentioned or otherwise covered within this Response, Mr. Fabian attests to viewing the following statements from the operative complaint at or around the time those statements were made, and attests that these statements influenced his decision-making in regards to his activities dealing with Nano, XRB, and BitGrail: ¶¶ 70, 86, 88, 91, 92, 94, 97, 109, 112, 113, 114, 116, 117, 118, 121, 127, 131, 134, 139, 142, 143, 144, 154, 164, 165, 166, 168, and 169.

INTERROGATORY NO. 4:

Describe in detail each specific act or omission, if any, that you contend was negligent committed by:

- a.) Colin LeMahieu,
- b.) Mica Busch,
- c.) Zack Shaprio,

1 d.) Troy Retzer, and

2 e.) Hieusys LLC

3 Such description must include the date that the act or omission occurred, the circumstances in
4 which it occurred, and when you became aware of its occurrence. If the negligence involved an alleged
5 omission, specify exactly what action you contend should have been, but was not, taken. Your
6 description must also include the reasons why you contend such act or omission was negligent,
7 including by describing in detail the facts that you contend created a duty toward you, and the facts you
8 contend demonstrate how, if at all, the act or omission caused you damages.

9 **RESPONSE TO INTERROGATORY NO. 4:**

10 Lead Plaintiff objects to this Interrogatory as overbroad and unduly burdensome because it
11 seeks “each act or omission” and is therefore not proportional to the needs of the case. This is
12 particularly the case as the definitions in the Interrogatory construe “each” as inclusive rather than
13 exclusive. Nano Defendants will need to provide this Interrogatory more specifically so that Lead
14 Plaintiff can properly respond to the Interrogatory. This Interrogatory does not differentiate which acts
15 or omissions, if all, are already available to or known by the Nano Defendants on the basis of the Nano
16 Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that
17 this information is already readily available to the Nano Defendants by reference to the Complaint.

18 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
19 work-product.

20 Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

21 Subject to the foregoing objections, Plaintiff states that the challenged acts and omissions are
22 set forth in detail in the operative complaint pending in this Action, as well as how they caused harm
23 to the Plaintiff. **Specifically, the operative complaint contains all pertinent acts and omissions of**
24 **which Lead Plaintiff is currently aware. These pertinent acts and omissions from the operative**
25 **complaint, and their respective bases, may be found as to each of the listed defendants in the**
26 **operative complaint as follows:**

27 a) **Colin LeMahieu: ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23 69, 72, 74, 79, 86,**
28 **88, 89, 92, 94, 96, 97, 98, 109, 112, 113, 114, 121, 124, 127, 131, 138, 139, 141, 144, 145, 146, 147,**

148, 149, 150, 154, 160, 161, 162, 163, 164, 165, 167, 170, 171, 172, 173, 174, 228, 229, 230, 233, 234, 239, 240, and 241.

The acts and omissions set forth in these paragraphs of the operative complaint include Defendant LeMahieu's failure to adopt adequate safety precautions in the form of a lack of the Nano Protocol's idempotence and vulnerability to Double Withdrawal Transactions. As evidenced by the Italian Bankruptcy Proceedings obtained by Lead Plaintiff, this lack of protection resulted in exploitation and theft of XRB totaling over \$170 million in loss. The Nano Defendants, including Defendant LeMahieu became aware of this issue before the exploit and theft took place, and still failed to safeguard the XRB, and misrepresented the safety of the Nano Protocol and the Bitgrail exchange.

b) Mica Busch: ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23, 74, 91, 109, 112, 113, 114, 131, 133, 134, 144, 145, 146, 147, 148, 149, 150, 154, 160, 161, 162, 163, 164, 165, 167, 170, 171, 172, 173, 174, 228, 229, 230, 233, 234, 239, 240, and 241.

The acts and omissions set forth in these paragraphs of the operative complaint include Defendant Busch's failure to adopt adequate safety precautions in the form of a lack of the Nano Protocol's idempotence and vulnerability to Double Withdrawal Transactions. As evidenced by the Italian Bankruptcy Proceedings obtained by Lead Plaintiff, this lack of protection resulted in exploitation and theft of XRB totaling over \$170 million in loss. The Nano Defendants, including Defendant Busch became aware of this issue before the exploit and theft took place, and still failed to safeguard the XRB, and misrepresented the safety of the Nano Protocol and the Bitgrail exchange.

c) Zack Shapiro: ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23, 74, 109, 112, 113, 114, 116, 117, 118, 119, 131, 144, 145, 146, 147, 148, 149, 150, 154, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 228, 229, 230, 233, 234, 239, 240, and 241.

The acts and omissions set forth in these paragraphs of the operative complaint include Defendant Shapiro's failure to adopt adequate safety precautions in the form of a lack of the Nano Protocol's idempotence and vulnerability to Double Withdrawal Transactions. As evidenced by the Italian Bankruptcy Proceedings obtained by Lead Plaintiff, this lack of

1 protection resulted in exploitation and theft of XRB totaling over \$170 million in loss. The Nano
 2 Defendants, including Defendant Shapiro, became aware of this issue before the exploit and theft
 3 took place, and still failed to safeguard the XRB, and misrepresented the safety of the Nano
 4 Protocol and the Bitgrail exchange.

5 d) Troy Retzer: ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23, 74, 76, 78, 109, 112, 113,
 6 114, 129, 131, 142, 143, 144, 145, 146, 147, 148, 149, 150, 154, 160, 161, 162, 163, 164, 165, 167,
 7 170, 171, 172, 173, 174, 228, 229, 230, 233, 234, 239, 240, and 241.

8 The acts and omissions set forth in these paragraphs of the operative complaint include
 9 Defendant Retzer's failure to adopt adequate safety precautions in the form of a lack of the Nano
 10 Protocol's idempotence and vulnerability to Double Withdrawal Transactions. As evidenced by
 11 the Italian Bankruptcy Proceedings obtained by Lead Plaintiff, this lack of protection resulted in
 12 exploitation and theft of XRB totaling over \$170 million in loss. The Nano Defendants, including
 13 Defendant Retzer, became aware of this issue before the exploit and theft took place, and still
 14 failed to safeguard the XRB, and misrepresented the safety of the Nano Protocol and the Bitgrail
 15 exchange.

16 e) Hieusys LLC: ¶¶ 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 21, 22, 23, 74, 109, 112, 113, 114,
 17 131, 144, 145, 146, 147, 148, 149, 150, 154, 160, 161, 162, 163, 164, 165, 167, 170, 171, 172, 173,
 18 174, 228, 229, 230, 233, 234, 239, 240, and 241.

19 The acts and omissions set forth in these paragraphs of the operative complaint include
 20 Defendant Hieusys LLC's failure to adopt adequate safety precautions in the form of a lack of
 21 the Nano Protocol's idempotence and vulnerability to Double Withdrawal Transactions. As
 22 evidenced by the Italian Bankruptcy Proceedings obtained by Lead Plaintiff, this lack of
 23 protection resulted in exploitation and theft of XRB totaling over \$170 million in loss. The Nano
 24 Defendants, including Defendant Hieusys LLC, became aware of this issue before the exploit and
 25 theft took place, and still failed to safeguard the XRB, and misrepresented the safety of the Nano
 26 Protocol and the Bitgrail exchange.

27 Lead Plaintiff reserves the right to address and raise additional bases for attributing
 28 pertinent acts or omissions to Defendants as such are revealed in discovery. Lead Plaintiff

1 **expects such information to be forthcoming.**

2 **INTERROGATORY NO. 5:**

3 Identify each specific negligent act or omission that you contend gives rise to vicarious liability
4 – i.e., liability for the act or omission of another person. In this Interrogatory, “identify” means to
5 describe in detail the act or omission that you contend was negligent, to identify the person whom you
6 contend is vicariously liable for the commission of the act or omission, and to describe in detail the
7 facts that you contend make such person vicariously liable for the act or omission.

8 **RESPONSE TO INTERROGATORY NO. 5:**

9 Lead Plaintiff objects to this Interrogatory as overbroad and unduly burdensome because it
10 seeks “each specific negligent act or omission” and is therefore not proportional to the needs of the
11 case. This is particularly the case as the definitions in the Interrogatory construe “each” as inclusive
12 rather than exclusive. This Interrogatory is also vague in that it does not specify between whom
13 vicarious liability is being inquired. Nano Defendants will need to provide this Interrogatory more
14 specifically so that Lead Plaintiff can properly respond to the Interrogatory. This Interrogatory does
15 not differentiate which acts or omissions, if all, are already available to or known by the Nano
16 Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff
17 particularly objects on the basis that this information is already readily available to the Nano Defendants
18 by reference to the Complaint.

19 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
20 work-product.

21 Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions, and
22 objects that this Interrogatory is compound.

23 Subject to the foregoing objections, Lead Plaintiff states that some of the acts or omissions that
24 give rise to vicarious liability include Defendant LeMahieu’s and the Nano Defendant’s promotion of
25 XRB (including the offering of investment advice), Nano Defendants’ partnership with Defendant
26 Firano to develop a RaiBlocks dedicated exchange, the failure of disclosing material information
27 relating to XRB Protocol, the shutdown of the BitGrail Exchange through Firano while knowingly
28 concealing theft from XRB accountholders, disclosure of said theft, lacking proper security for XRB,

improperly maintaining the security of the BitGrail Exchange, and misrepresenting the Exchange as secure to the public. **The constant communication within the chat logs among the Nano Defendants (and so within the Nano Defendants' possession) show how no decision was made independently, as each decision regarding XRB was made in consultation among the Nano Defendants and all aspects of XRB were managed jointly. Specifically, within the Complaint, Lead Plaintiff alleges that the Nano Defendants worked as a collective unit in the promotion of Nano, XRB, and BitGrail, the bases for which are contained within the operative complaint. See First Amended Complaint, ¶¶ 32-38, 77, 78, 80, 109, 120, 123, 126, 127, 159, 167, 172, and 173. For example, in these paragraphs, Lead Plaintiff relies upon Nano's own assertions that each Defendant was a part of the "core" team at Nano, each handling a separate yet co-dependent and co-operating aspect of Nano's operations. The Nano Core Team, as described in part by Defendant LeMahieu, possess more than 50% of the total voting power within Nano. Defendant Firano was also described by Nano as being a key member of Nano's operational team, together solving operational challenges at BitGrail. Together, the Nano Core Team promoted XRB, including any "challenged statements" or "acts and omissions." The Core Team, along with Defendant Firano, repeatedly advertised publicly on social media the safety of Nano and BitGrail, and Defendant Firano represented publicly that he and the Nano Defendants all worked together in understanding and working with the safety concerns of BitGrail. The Nano Defendants all took to social media in various capacities to promote the use of XRB and its safety.**

Lead Plaintiff reserves the right to address and raise additional bases for vicarious liability of acts or omissions to Defendants in addition to those raised in the complaint should Lead Plaintiff become aware of those bases. Lead Plaintiff expects such information to be forthcoming in discovery.

INTERROGATORY NO. 6:

Describe in detail all facts relating to any relationship you contend exists between any of the Nano Defendants and Francesco Firano or any other person affiliated with the cryptocurrency exchange known as BitGrail, including all facts relating to your contention that any of the Nano Defendants "controlled" or were "involved" with BitGrail (*see* complaint ¶¶ 4, 18, 108, 172, 220, 221 and 246).

RESPONSE TO INTERROGATORY NO. 6:

Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome. Specifically, “any other person” is far too broad and vague to the point this Interrogatory is unanswerable, especially when “any” is defined by the Nano Defendants as inclusive rather than exclusive. This Interrogatory does not differentiate which facts pertaining to the relationship between Nano Defendants and Firano, if all, are already available to or known by the Nano Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by reference to the Complaint.

Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney work-product.

Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

Subject to the foregoing objections, Lead Plaintiff states that Defendant Firano and the Nano Defendants’ relationship was such that both Firano and the Nano Defendants were partnered up to develop the BitGrail Exchange, following which the Nano Defendants began to exercise significant control over the development and operation of the BitGrail Exchange. The Nano Defendants, in other words, exercised executive control over the project, as compared to Firano who implemented the changes requested by the Nano Defendants. **Specifically, this is generally supported by the chat logs produced by the Nano Defendants (and so within the Nano Defendants’ possession). Additionally this is supported by the paragraphs of the operative complaint which show all facts in Lead Plaintiff’s possession that the Nano Defendants acted with control or were involved with BitGrail and/or with Firano, which include: ¶¶ 4, 5, 6, 9, 10, 11, 12, 16, 17, 18, 19, 20, 37, 38, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 150, 152, 153, 155, 156, 157, 160, 161, 164, 165, 166, 168, 169, 170, 171, and 172. More specifically, Defendant Firano has publicly represented multiple times that the Nano Defendants had a direct hand in the control over the BitGrail exchange and over the promotion of XRB on and for BitGrail.**

In Defendant Firano’s own words, he described being contacted by the Nano Defendants to build an exchange from the ground up that supported Nano natively, to work on the project

1 with the Nano Defendants directly, and that the Nano Defendants directed the changes they
 2 wished to see on and for BitGrail. Defendant Firano, in his own words, warned the Nano
 3 Defendants that their actions presented safety concerns, but according to Firano, the Nano
 4 Defendants ignored those concerns. The “Nano Updates” Twitter Account confirms this account
 5 insofar as it reveals that the Nano Defendants and Fabian worked closely together on BitGrail.

6 In addition to the above, the Nano Defendants had a specific focus on promoting XRB on
 7 BitGrail. For example, the Nano Twitter account announced the launch of XRB on BitGrail, and
 8 the Nano Defendants made a specific template for purchasing XRB on BitGrail. The Italian
 9 Tribunal proceedings against Defendants Firano and BitGrail make clear that XRB was stolen
 10 via the BitGrail platform due to deficiencies within the Nano Protocol, of which Defendant Firano
 11 repeatedly warned the Nano Defendants. Finally, the Nano Defendants repeatedly assured Lead
 12 Plaintiff and members of the Class that investment in XRB on BitGrail was safe.

13 **INTERROGATORY NO. 7:**

14 Describe in detail all monetary relief that you seek in this action, on your own behalf or on
 15 behalf of anyone else, including any “compensatory damages, punitive damages, incidental damages,
 16 and consequential damages” (*see* complaint, at 62), including any calculations, estimates, formulas,
 17 spreadsheets, other documents, or other methods you contend should be used to determine such relief.

18 **RESPONSE TO INTERROGATORY NO. 7:**

19 Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome.
 20 Lead Plaintiff is not yet aware which specific monetary damages he will pursue, as such determinations
 21 pend on the outcome of this litigation. Therefore, Lead Plaintiff also objects on the basis that such
 22 Interrogatory is premature prior to any ruling on the merits of this Action, as a class or otherwise. To
 23 the extent this question seeks Lead Plaintiff’s current position, Lead Plaintiff particularly objects on
 24 the basis that this information is already readily available to the Nano Defendants by reference to the
 25 Complaint.

26 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
 27 work-product.

28 Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

1 Subject to the foregoing objections, Lead Plaintiff states that they intend to seek equitable
 2 restitution including rescission of investments in XRB held in accounts at BitGrai, restoration of the
 3 status quo ante, return to Plaintiff and the Class all cryptocurrency or fiat currency paid as a result of
 4 Defendants' unlawful actions. Additionally, Lead Plaintiff will seek, jointly and severally, *inter alia*,
 5 compensatory damages, punitive damages, incidental damages, and consequential damages. Lead
 6 Plaintiff will also seek pre-and-post-judgment interest, and attorneys' fees and litigation expenses.
 7 These damages will be fully pursued pending the outcome of this Action, and will be based on findings
 8 of culpability of the Defendants in this Action. Lead Plaintiff will calculate these damages in manners
 9 traditional to these damages calculations per their respective claims alleged in the FAC, or as Ordered
 10 by the Court. Lead Plaintiff will based these calculations in part on publicly available trading
 11 information, as well as from the information retained by the Defendants in this Action through the
 12 regular course of business.

13 Based on the social media posts of the named Defendants, Lead Plaintiff, on or about August
 14 16, 2017 purchased 1.62457112 BTC for \$7,104.30. On August 31, 2017, Lead Plaintiff sent .66971933
 15 BTC to BitGrail. On September 1, 2017, Plaintiff purchased approximately 21,143 XRB on BitGrail.
 16 On December 12, 2017, Lead Plaintiff, transferred \$2,850.00 to BitGrail and purchased an additional
 17 2,000 XRB. In total, Lead Plaintiff purchased 23,143 XRB. **These give rise to Mr. Fabian's**
 18 **individualized damages. As for class-wide damages, the figures provided in the operative**
 19 **complaint at ¶¶ 231, 237, and 244 are estimations of damages from the Class losing the entirety**
 20 **their reserves of XRB—a total worth of over \$170 million. See First Amended Complaint, ¶¶ 10**
 21 **(“the BitGrail Defendants announced that over 15 million XRB, bearing a market value of**
 22 **approximately \$170 million, which were supposedly safely stored on BitGrail, were “lost.”), 16,**
 23 **17, 21 (“Plaintiff’s claims for negligence against Defendants arise from the Nano Defendant’s**
 24 **failure to adopt adequate idempotency measure in the XRB Protocol and the BitGrail**
 25 **Defendant’s failure to safeguard the Class’ XRB deposits, resulting in the theft of the Class’**
 26 **XRB—representing a \$170 million loss.”), 25 (“Plaintiff and the Class are among the members**
 27 **of the public who invested in tens of millions of dollars’ worth of XRB to be held in, and**
 28 **exchanged from, their BitGrail accounts, and who, from July 2017 through January 2018,**

1 through no fault of their own, suffered a loss of more than \$170 million worth of XRB when their
 2 investment holdings were simply “lost.”), 154 (“In early-February 2018, BitGrail announced that
 3 it had “lost” \$170 Million worth of XRB from its exchange due to “unauthorized transactions.”
 4 The “missing” XRB amounted to approximately eighty percent (80%) of the XRB that BitGrail
 5 customers held in their accounts and amounts to nearly fifteen percent (15%) of all XRB in
 6 existence.”), 171.

7 Final damages figures will be elucidated through further discovery, and ultimately the use
 8 of experts in determining damages. *See* First Amended Complaint ¶ 64 (“As a result of the
 9 foregoing, Plaintiff and the Class have been damaged in an amount that will be proven at trial.”).

10 **INTERROGATORY NO. 8:**

11 Describe in detail all non-monetary relief that you seek in this action, on your own behalf or on
 12 behalf of anyone else, including any “accounting” of funds or the imposition of a “constructive trust”
 13 (*see* complaint, at 62), including the facts you contend would justify such relief.

14 **RESPONSE TO INTERROGATORY NO. 8:**

15 Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome.
 16 Lead Plaintiff is not yet aware which specific non-monetary damages he will pursue, as such
 17 determinations pend on the outcome of this litigation. Therefore, Lead Plaintiff also objects on the basis
 18 that such Interrogatory is premature prior to any ruling on the merits of this Action, as a class or
 19 otherwise To the extent this question seeks Lead Plaintiff’s current position, Lead Plaintiff particularly
 20 objects on the basis that this information is already readily available to the Nano Defendants by
 21 reference to the Complaint.

22 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
 23 work-product.

24 Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

25 Subject to the foregoing objections, Plaintiff states that currently, they intend to seek an order
 26 requiring an accounting of the remaining funds and assets raised from the Plaintiff and the Class in
 27 connection with XRB, and an order imposing a constructive trust over the funds and assets rightfully
 28 belonging to Plaintiff and the Class. **Lead Plaintiff seeks these forms of non-monetary relief to a)**

determine the exact nature of the profits made and/or retained by the Defendants in this Action; and b) to ensure that these funds can be put into a trust to maximize full restitution for the class. The facts which would justify such relief are that, if Lead Plaintiff and the class are successful on their claims, securing the resources to pay any judgment would be crucial in maximizing the ultimate recovery.

INTERROGATORY NO. 9:

Identify any communications with or by you, or on your behalf, relating to any challenged statement identified in response to Interrogatory No. 1, any act or omission described in your response to Interrogatory No. 4, or any other matters relevant to your claims and allegations in this action.

RESPONSE TO INTERROGATORY NO. 9:

Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome. Specifically, “any communications” and “any other matters” are far too broad and vague to the point this Interrogatory is unanswerable and beyond the scope of this litigation, especially when “any” is defined by the Nano Defendants as inclusive rather than exclusive. Furthermore, this Interrogatory does not differentiate which facts pertaining to communications, challenged statements, and acts or omissions, if all, are already available to or known by the Nano Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by reference to the Complaint.

Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney work-product. Lead Plaintiff also objects that this Interrogatory is compound.

Lead Plaintiff also objects on the basis that this Interrogatory seeks legal conclusions.

Subject to the foregoing objections, Lead Plaintiff states that commencing in or around April 2017, Lead Plaintiff learned about XRB by reading social media posts touting XRB – including but not limited to those published on Twitter. Lead Plaintiff followed the Twitter feeds of Defendant LeMahieu, Defendant Shapiro, and other people related to XRB. Lead Plaintiff decided to invest in XRB, open an account at BitGrail, and stake his investment holdings there. Lead Plaintiff reviewed and relied upon the Nano Defendants’ promotions on social media channels and statements made on the Nano Defendant’s own website representing that BitGrail was a safe and reliable exchange.

1 **Additionally, and without excluding any challenged statement or act or omission not mentioned**
 2 **or otherwise covered within this Response, Mr. Fabian attests to viewing the following statements**
 3 **from the operative complaint at or around the time those statements were made, and attests that**
 4 **these statements influenced his decision-making in regards to his activities dealing with Nano,**
 5 **XRB, and BitGrail: ¶¶ 70, 86, 88, 91, 92, 94, 97, 109, 112, 113, 114, 116, 117, 118, 121, 127, 131,**
 6 **134, 139, 142, 143, 144, 154, 164, 165, 166, 168, and 169.**

7 **Lead Plaintiff has no other relevant communications to disclose at this time.**

8 **INTERROGATORY NO. 10:**

9 Identify each person with knowledge relating to your claims and allegations in the complaint
 10 and state the subject of that knowledge.

11 **RESPONSE TO INTERROGATORY NO. 10:**

12 Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome.
 13 Specifically, “each person” is far too broad and vague to the point this Interrogatory is unanswerable
 14 and beyond the scope of this litigation, especially when “each” is defined by the Nano Defendants as
 15 inclusive rather than exclusive. It is impossible for Lead Plaintiff to arrive at a list of every person who
 16 has knowledge relating to the claims and allegations in the Complaint. Furthermore, what constitutes
 17 as “knowledge relating” and “subject of that knowledge” is also vague and ill-defined.

18 Subject to the foregoing objections, Plaintiff states in addition to counsel in this Action, those
 19 who certainly have knowledge relating to the claims and allegations in this Action include the Nano
 20 Defendants, the BitGrail Defendants, Counsels in this Action, and any investor in XRB who could
 21 belong to this Class. Lead Plaintiff states that commencing in or around April 2017, Lead Plaintiff
 22 learned about XRB by reading social media posts touting XRB – including but not limited to those
 23 published on Twitter. Lead Plaintiff followed the Twitter feeds of Defendant LeMahieu, Defendant
 24 Shapiro, and other people related to XRB. Lead Plaintiff decided to invest in XRB, open an account at
 25 BitGrail, and stake his investment holdings there. Lead Plaintiff, reviewed and relied upon the Nano
 26 Defendants’ promotions on social media channels and statements made on the Nano Defendant’s own
 27 website representing that BitGrail was a safe and reliable exchange.

28 **INTERROGATORY NO. 11:**

Identify all litigation matters in which you have been a party. For purposes of this Interrogatory, “identify” means to provide the case name, case number, court in which the litigation took place, and a description of the subject of the litigation.

RESPONSE TO INTERROGATORY NO. 11:

Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome. Specifically, “all litigations matters” is far too broad and vague to the point this Interrogatory is unanswerable, especially when “all” is defined by the Nano Defendants as inclusive rather than exclusive. Furthermore, this Interrogatory does not differentiate which facts regarding Fabian’s prior litigation matters, if all, are already available to or known by the Nano Defendants. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by simple searches of Fabian’s information. Finally, Lead Plaintiff objects that this Interrogatory is beyond the scope and relevancy of this litigation.

Subject to the foregoing objections, Lead Plaintiff states that he was involved in a personal injury case in college – Fabian v. Equity Housing, but is unsure if this suit ever got filed. Lead Plaintiff believes this case settled in pre-suit in 2012.

INTERROGATORY NO. 12:

Describe in detail all facts relating to your contention that a “class action is the proper form” to bring this action (complaint ¶ 40).

RESPONSE TO INTERROGATORY NO. 12:

Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome. Specifically, “all” is far too broad and vague to the point this Interrogatory is unanswerable and beyond the scope of this litigation. Furthermore, this Interrogatory does not differentiate which facts pertaining propriety of a class action if all, are already available to or known by the Nano Defendants on the basis of the Nano Defendants making these statements. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already readily available to the Nano Defendants by reference to the Complaint, and legal principles ascertainable through review of applicable statutes and case law.

Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney work-product. Lead Plaintiff also objects that the Interrogatory improperly seeks legal positions and

1 contentions and conclusions related to class certification through the guise of factual discovery.

2 Additionally, Lead Plaintiff objects on the grounds that it is premature and imposes undue
 3 burden by demanding “all facts” in support of Lead Plaintiff’s position while factual and expert
 4 discovery is still proceeding in this matter and before Lead Plaintiffs have revealed their full basis for
 5 seeking class certification. See FED. R. CIV. P. 33(a)(2) “[T]he court may order that the interrogatory
 6 [that asks for an opinion or contention that relates to the fact or the application of law to fact] need not
 7 be answered until discovery is complete, or until a pretrial conference or some other time.”); *see also*
 8 *Yingling v. eBay, Inc.*, 2010 U.S. Dist. LEXIS 12800, *7-9 (N.D. Cal. Jan. 29, 2010) (citing *In re*
 9 *Priceline.com Inc. Sec Litig.*, 233 F.R.D. 83, 86-87 (D. Conn. Nov. 23, 2005)). Lead Plaintiff has not
 10 yet moved for class certification, at which point they will be required to carry the burden of Federal
 11 Rule of Civil Procedure 23. If Lead Plaintiff does make such a motion, Lead Plaintiff’s positions with
 12 respect to class certification will be comprehensively set forth in its class certification motion. Lead
 13 Plaintiff reserve all rights to amend their responses to introduce legal and factual theories, including in
 14 reply to Nano Defendants’ Response to Lead Plaintiff’s Motion for Class Certification.

15 **Subject to the foregoing, and retaining all objections, Lead Plaintiff’s basis for a class**
 16 **Action being the proper forum to maintain this Action is as follows: this action satisfies all of the**
 17 **requirements of Federal Rules of Civil Procedure, including numerosity, commonality,**
 18 **predominance, typicality, adequacy, and superiority. Members of the Class are so numerous and**
 19 **geographically dispersed that joinder of all members is impractical. Based on the immense scale**
 20 **of the XRB lost, class members are likely in the thousands (and shall be better ascertained when**
 21 **Defendants provide full and proper discovery). Because some XRB users’ losses are relatively**
 22 **modest, it would be impracticable for each to bring a lawsuit individually. Even for those whose**
 23 **losses are large, a class action is still the most efficient method of litigating these claims. See First**
 24 **Amended Complaint ¶ 60. Rather, by bringing this action as a class action, claims for losses of**
 25 **XRB can be satisfied as swiftly and efficiently as possible. Because all Class members suffered in**
 26 **the same or similar manner (relying on the same representations by Defendants and suffering**
 27 **from the same acts and omissions of Defendants), common questions predominate as to liability.**
 28 **A fuller list of common questions can be found on paragraph ¶ 50 of the operative complaint.**

1 **Lead Plaintiff is advancing the same claims as any other prospective member of the Class, and**
 2 **in addition to their expertise, Lead Plaintiff and Lead Counsel will adequately represent the Class**
 3 **without conflict.**

4 **INTERROGATORY NO. 13:**

5 Identify all documents, whether or not within your possession, custody, or control, relating to
 6 the size and membership of the putative class alleged in paragraph 41 of the complaint. For any such
 7 document not within your possession, custody, or control, describe in detail the facts that cause you
 8 believe such document exists.

9 **RESPONSE TO INTERROGATORY NO. 13:**

10 Lead Plaintiff objects on the basis that this Interrogatory is overbroad and unduly burdensome.
 11 Specifically, “all” is far too broad and vague to the point this Interrogatory is unanswerable and beyond
 12 the scope of this litigation. Furthermore, this Interrogatory does not differentiate which facts pertaining
 13 to the size and membership of the putative class if all, are already available to or known by the Nano
 14 Defendants. Accordingly, Lead Plaintiff particularly objects on the basis that this information is already
 15 readily available to the Nano Defendants by reference to the Complaint, and legal principles
 16 ascertainable through review of applicable statutes and case law.

17 Additionally, Lead Plaintiff objects on the basis that this Interrogatory seeks protected attorney
 18 work-product. Lead Plaintiff also objects that the Interrogatory improperly seeks legal positions and
 19 contentions and conclusions related to class certification through the guise of factual discovery.

20 Additionally, Lead Plaintiff objects on the grounds that it is premature and imposes undue
 21 burden by demanding “all facts” in support of Lead Plaintiff’s position while factual and expert
 22 discovery is still proceeding in this matter and before Lead Plaintiffs have revealed their full basis for
 23 seeking class certification. See FED. R. CIV. P. 33(a)(2) “[T]he court may order that the interrogatory
 24 [that asks for an opinion or contention that relates to the fact or the application of law to fact] need not
 25 be answered until discovery is complete, or until a pretrial conference or some other time.”); *see also*
 26 *Yingling v. eBay, Inc.*, 2010 U.S. Dist. LEXIS 12800, *7-9 (N.D. Cal. Jan. 29, 2010) (citing *In re*
 27 *Priceline.com Inc. Sec Litig.*, 233 F.R.D. 83, 86-87 (D. Conn. Nov. 23, 2005)). Lead Plaintiff has not
 28 yet moved for class certification, at which point they will be required to carry the burden of Federal

Rule of Civil Procedure 23. If Lead Plaintiff does make such a motion, Lead Plaintiff's positions with respect to class certification will be comprehensively set forth in its class certification motion. Lead Plaintiff reserve all rights to amend their responses to introduce legal and factual theories, including in reply to Nano Defendants' Response to Lead Plaintiff's Motion for Class Certification.

Lead Plaintiff also objects that this Interrogatory is compound.

Subject to the foregoing objections, Plaintiff will rely on public reports about Nano, and particularly reports regarding how withdrawals of Nano were frozen for non-EU investors first, prior to U.S. investors. **Based on the immense scale of the XRB lost, class members are likely in the thousands (and shall be better ascertained when Defendants provide full and proper discovery). See First Amended Complaint at ¶ 154 ("In early-February 2018, BitGrail announced that it had "lost" \$170 Million worth of XRB from its exchange due to "unauthorized transactions." The "missing" XRB amounted to approximately eighty percent (80%) of the XRB that BitGrail customers held in their accounts and amounts to nearly fifteen percent (15%) of all XRB in existence.").** Such a loss, as revealed by BitGrail itself, must represent the losses of hundreds if not thousands of investors. *See* Lead Plaintiff's First Document Production, L&K_00302-L&K_00303; 305; 311; 319.

Dated: July 14, 2020

Respectfully submitted,

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VERIFICATION OF INTERROGATORY ANSWERS

I, James Fabian, am Lead Plaintiff in this Action. I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information and belief. I verify under penalty of perjury that the foregoing is true and correct.

Executed on: 07/14/2020


SignNow e-signature ID: 8a1a6d1c70...
James Fabian
Lead Plaintiff